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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 396

C. J. D. RUDOLPH, ET AL., PETITIONERS,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 11, 1961
CERTIORARI GRANTED NOVEMBER 13, 1961

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18788

C. J. D. Rudolph and Irma M. Rudolph, Appellants,

versus

United States of America, Appellee.

Request as to Printing Only Certain Portions of the Record Under Rule 23 of the Rules of This Court—Filed January 27, 1961

Now come C. J. D. Rudolph and Irma M. Rudolph, Appellants, and, proceeding under Rule 23 of this Honorable Court, hereby file this request that only the following portions of the record now on file herein be printed, to-wit:

(1) Plaintiffs' First Amended Original Complaint (pages 2-18 of the record herein);

(2) Original Answer of Defendant (pages 19-20 of the record herein);

(3) Defendant's Answer to Amended Complaint (page 21 of the record herein);

[fol. 2] (4) Transcript of Testimony (pages 84-176 of the record herein);

(5) Opinion of the Court (pages 177-180 of the record herein);

(6) Judgment of September 28, 1960 (page 181 of the record herein).

Respectfully submitted,

Turner, White, Atwood, McLane and Francis, By B. T. McElroy, Attorneys for Appellants, 1900 Mercantile Dallas Building, Dallas 1, Texas.

Certificate of Service (omitted in printing).

IN THE UNITED STATES COURT OF APPEALS

SUPPLEMENT TO REQUEST AS TO PRINTING ONLY CERTAIN PORTIONS OF THE RECORD UNDER RULE 23 OF THE RULES OF THIS COURT—Filed January 27, 1961

Now come C. J. D. Rudolph and Irma M. Rudolph, Appellants, and, proceeding under Rule 23 of this Honorable [fol. 3] Court, hereby file this their Supplement to their request heretofore filed, and now move this Court as follows, to-wit:

(1) That Exhibit "A" to Plaintiffs' First Amended Original Complaint be considered in its original form in lieu of being printed as said exhibit has been transmitted as Plaintiffs' Exhibit No. 7 with the instruments on file with this Honorable Court as original exhibits.

Respectfully submitted,

Turner, White, Atwood, McLane and Francis, By B. T. McElroy, Attorneys for Appellants, 1900 Mercantile Dallas Building, Dallas 1, Texas.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 4]

IN THE UNITED STATES COURT OF APPEALS

ORDER TO FILE COUNTER-DESIGNATION OUT OF TIME OF ADDITIONAL TERMS FOR PRINTING—Filed January 27, 1961

On this day came on to be considered Appellee's motion for leave to file out of time counter-designation of additional portions of record for printing, and the Court being fully advised, it is

Ordered that motion be granted.

Dated this 12th day of January, 1961.

Richard T. Rives, Judge, United States Court of Appeals.

IN THE UNITED STATES COURT OF APPEALS

COUNTER-DESIGNATION OF PORTIONS OF RECORD ON APPEAL TO BE PRINTED—Filed January 27, 1961

Pursuant to Rule 23 of the rules of this Court, the United States of America, by and through the United States Attorney for the Northern District of Texas, hereby designates the following portions of the record on appeal to be printed:

[fol. 5] (1) Defendant's interrogatories to the plaintiff (C. J. D. Rudolph).

(2) Answer of plaintiff, C. J. D. Rudolph, to defendant's interrogatories.

(3) Plaintiffs' Exhibit 10, Schedule of Events, Pages 1 to 6.

(4) Plaintiffs' Exhibit 11, Schedule of morning meeting, Friday, December 14, 1956.

(5) Plaintiffs' Exhibit 13, Memorandum of convention costs.

(6) Plaintiffs' Exhibit 14, Letter to Doctor Peale.

(7) Government's Exhibit 1, 1956 Convention Qualification Rules.

W. B. West III, United States Attorney, W. E. Smith, Assistant United States Attorney.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 6]

IN THE UNITED STATES COURT OF APPEALS

STIPULATION AS TO RECORD—Filed January 27, 1961

Subject to the approval of the Court, it is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the following items, previously counter-designated by the Appellee for printing, shall not be printed as part of the record:

1. Defendant's interrogatories to the plaintiff (C. J. D. Rudolph).

2. Answer of plaintiff, C. J. D. Rudolph, to defendant's interrogatories.

B. Thomas McElroy, Counsel for the Appellant.

Abbott M. Sellers, Acting Assistant Attorney General, Counsel for the Appellee.

Dated this 20 day of January, 1961.

[fol. 7]

7

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 8317

C. J. D. RUDOLPH and ERMA M. RUDOLPH, Plaintiffs,

vs.

UNITED STATES OF AMERICA, Defendants.

FIRST AMENDED ORIGINAL COMPLAINT—Filed August 31, 1960

Now come C. J. D. Rudolph and Erma M. Rudolph, husband and wife, hereinafter called "Plaintiffs", complaining of the United States of America, hereinafter called "Defendant", and with leave of Court first had and obtained, file this their First Amended Original Complaint, [fol. 8] and for such pleading would respectfully show the Court:

I.

Plaintiffs are both citizens of the United States residing in Dallas County, Texas, in the Dallas Division of the Northern District of Texas. Defendant is the United States of America.

II.

This action arises under the Internal Revenue Code and Plaintiff brings this complaint against Defendant pursuant to the provisions of Title 28, Section 1346(a)(1), United States Code. The nature of Plaintiffs' complaint is an action against the United States for recovery of overpayment of Federal income taxes and interest thereon for the calendar year 1956 together with interest on such sum, which has been erroneously assessed by Defendant and paid by Plaintiffs to Defendant and illegally retained by Defendant in the amount detailed hereinafter.

III.

Plaintiffs filed a joint Federal income tax return for the calendar year 1956 with the District Director of Internal Revenue, Dallas, Texas. This return was timely filed and the tax due thereon was timely paid to such District Director.

[fol. 9] IV.

The Commissioner of Internal Revenue (hereinafter sometimes called the "Commissioner") subsequently assessed a deficiency in income tax in respect of said calendar year in the amount of $126.90. Plaintiffs paid the asserted deficiency in income tax for the calendar year 1956, together with $10.19 interest thereon, to the District Director of Internal Revenue, Dallas, Texas, on or about September 8, 1958.

V.

Plaintiffs timely filed with the District Director of Internal Revenue, Dallas, Texas, a claim for refund of said deficiency and interest. A true copy of said claim for refund is attached hereto and marked as Exhibit "A".

VI.

In summation of the grounds for refund of the Federal income taxes set forth in detail in said claim for refund and incorporated herein by reference, Plaintiffs allege as follows:

1. That irrespective of the value of said convention trip, all of the costs of which were paid by Southland Life Insurance Company, Plaintiffs realized no gross income by reason of Southland Life Insurance Company's having paid all of Plaintiffs' costs in respect of said convention trip.

2. In the alternative, should the value of said convention trip constitute gross income to Plaintiffs, such value [fol. 10] and the gross income attributable thereto did not exceed $100.00.

3. Further, in the alternative, if Plaintiffs realized gross income in respect of said convention trip, whatever the amount thereof be, Plaintiffs are entitled to a deduction in an amount equal to said gross income by reason of the fact that Plaintiffs by making said convention trip incurred an ordinary and necessary expense in carrying on a trade or business of Plaintiff C. J. D. Rudolph in an amount equal to said gross income and accordingly Plaintiffs realized no taxable net income in respect of said convention trip.

VII.

The Commissioner sent to Plaintiffs on July 8, 1959, by registered mail notice of disallowance of said claim for refund and has not allowed said claim for refund or any portion thereof.

VIII.

For the reasons set forth in said claim for refund attached and marked Exhibit "A" and summarized in paragraph VI hereof, Plaintiffs erroneously paid to Defendant taxes in the amount of $126.90, together with interest thereon in the amount of $10.19, and Defendant owes Plaintiffs said erroneously paid sum and interest thereon as provided by law.

IX.

For their further pleading herein, Plaintiffs say that it is the custom, usage and practice of Southland Life Insur- [fol. 11] ance Company, and of life insurance companies generally, to sponsor conventions of the type herein in-

volved to serve valid business purposes of such companies as part of their training program for Field Representatives, agents, and employees, with said conventions used and designed for instruction, motivation and personal contact of such personnel for the furtherance of the legitimate business of the companies involved.

Wherefore, Plaintiffs demand judgment against Defendant for the sum of $126.90, taxes and of $10.19 interest, together with interest on such sum as provided by law, for costs and other relief as in law and in equity they are entitled to receive.

Turner, White, Atwood, McLane and Francis, By B. Thomas McElroy, Attorneys for Plaintiffs, 1900 Mercantile Dallas Building, Dallas 1, Texas.

[fol. 11a]

EXHIBIT "A" TO FIRST AMENDED ORIGINAL COMPLAINT

Form 843
(Rev. 5-56)

District Director's Stamp
(Date received)

EXHIBIT "A"

U. S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

CLAIM

To Be Filed With the District Director Where Assessment Was Made or Tax Paid

The District Director will indicate in the block below the kind of claim filed, and fill in, where required.

☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps
C. J. D. Rudolph and wife Irma M. Rudolph

Number and street
3501 Purdue

City, town, postal zone, State
Dallas 25, Texas

1. District in which return (if any) was filed
Dallas, Texas

2. Name and address shown on return, if different from above

3. Period—If for tax reported on annual basis, prepare separate form for each taxable year
From January 1, 1956 To December 31, 1956.

4. Kind of tax
Income

5. Amount of assessment
$1,277.23

Dates of payment
April 15, 1957—$1,150.33;
September 6, 1958—$126.90

6. Date stamps were purchased from the Government

7. Amount to be refunded
$126.90

8. Amount to be abated (not applicable to income, estate, or gift taxes)
$

9. The claimant believes that this claim should be allowed for the following reasons:

Grounds for claim are set forth in Exhibit A-1 attached hereto and made a part hereof for all purposes.

Attach letter size sheets if space is not sufficient.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed C. J. D. RUDOLPH
C. J. D. Rudolph

IRMA M. RUDOLPH
IRMA M. RUDOLPH

Dated 12-18-1958

INSTRUCTIONS

1. The claim must set forth in detail each ground upon which it is made and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. If a joint income tax return was filed for the year for which this claim is filed, both husband and wife must sign this claim even though only one had income.

3. Whenever it is necessary to have the claim executed by an agent on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent to sign the claim on behalf of the taxpayer shall accompany the claim.

4. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

5. Where the taxpayer is a corporation, the claim will be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

[fol. 11b]

EXHIBIT A-1 TO FIRST AMENDED ORIGINAL COMPLAINT

MR. AND MRS. C. J. RUDOLPH
DALLAS, TEXAS
GROUNDS FOR CLAIM FOR REFUND OF FEDERAL INCOME TAXES PAID FOR CALENDAR YEAR 1956

Facts

In 1956 taxpayer C. J. Rudolph was employed as a life insurance agent for Southland Life Insurance Company ("Southland"), whose principal office is in Dallas, Texas. C. J. Rudolph served in such employment as an independent contractor and not as an employee. In 1956 Southland held a convention in New York City for its executives and certain of its life insurance agents who had shown ability in the field of life underwriting. Southland paid all of the costs of such convention including the food and lodging in New York City of those attending and in most cases the cost of transportation to New York City and return. Both Mr. and Mrs. Rudolph attended this convention and all costs of their trip were paid by Southland.

The Revenue Agent determined that the value of this trip was $560 and included such amount in taxpayers' gross income. Taxpayers have no personal knowledge of the exact manner in which the Revenue Agent determined that the value of their trip was $560 but to the best of their information and belief such determination was made on the basis of the total costs incurred by Southland in respect of said convention divided by the number of persons attending, which costs were allocated between transportation and other expenses as follows:

[fol. 11c]

Round trip, Dallas to New York (including meals, etc. en route)	$380.00
Other costs	180.00
	$560.00

This convention was held by Southland to serve a very vital agency function; the senior officers of Southland were

present not only for discussion and guidance but to report past accomplishments and to project the overall program of Southland for the ensuing year. The enhancement of the personality of Southland, as well as the development of a close feeling and loyalty and the recognition of the worth and achievement of each individual, was effected through such a convention. An agent in attendance at such a convention thereby realizes his importance to Southland, feels a more vital part of it and recognizes his part in Southland's success and responsibilities.

Professional instruction by outstanding representatives in selling or management is provided through such a convention. And above all, the informational instruction obtained at such a convention through discussion of common problems with others similarly situated aids in the development of greater skill and excellence of performance and stimulated interest. Through such instruction, information, and motivation, those in attendance are challenged to meet Southland established goals and to make their careers a profession and a success, thereby becoming better agents [fol. 11d] and contributing more adequately not only to their own well-being but to the success and future of Southland.

The itinerary for this convention was as follows:

December 11, 1956—Special trains leave Dallas at 9:30 P. M.

December 13, 1956—Trains arrive Jersey City, N. J. approximately 3:30 P. M. Group transferred by bus to Hotel Waldorf-Astoria, arriving there approximately 4:00 P. M.

December 14, 1956—9:30 A. M. to 12:00 noon—business session as follows:

Invocation—Neil H. Wright, Lubbock, Texas
"Welcome to New York"—Ben H. Carpenter, Executive Vice President
Agents' Panel—Herman Ford, CLU, Moderator, Assistant Vice President and Director of Sales
Huff Baines, Austin
Jimmie Whitmire, Wichita Falls
Sully Woodland, San Antonio
Johnny Wright, Tyler

"The 1957 Agency Activity Program"—Glenn M. Brooks, Vice President

"Our Southland Life Future"—Dan C. Williams, President

"Your Company and Mine"—John W. Carpenter, Chairman of the Board

LUNCHEON—12:30 P. M.

Presiding—Field Scovell, Vice President and Sup't. Ord. Agencies

"Success Through Right Thinking" Dr. Norman Vincent Peale

2:30 P. M.—Sightseeing Tour of Manhattan

December 15, 1956 8:45 A. M. Breakfast for ladies only. Afternoon free. Tickets available for those desiring to go to Radio City Music Hall. 6:30 P. M. Dinner at Copacabana.

December 16, 1956 10:45 A. M.—Buses transport group to Jersey City. Trains depart Jersey City about 1:00 P. M. Arrive Dallas about 7:00 A. M., Tuesday, December 18.

Southland invited to this convention only those agents who met certain requirements relating to achievement so as to avoid the expense of educating agents who were not attaining proficiency in the marketing of insurance. Southland expected those agents who met these standards to attend the convention inasmuch as Southland expected to benefit through increased insurance in force and from [fol. 11c] high company moral resulting from the practice of holding such conventions. Southland considers that such a convention provides an excellent opportunity for its executive officers to discuss common problems and opportunities with successful agents, and the only practical occasion for contact between most of the agents and executive officers is through such a convention.

The time and place of the convention meetings are selected by Southland as well as the location of accomodations on the train and at the hotel for those attending. Southland also decides the method of travel and deter-

mines the schedules for such travel and such travel is always accomplished on a group basis originating from one or two originating points. This is done not only to make for more efficient use of time but to further facilitate individual conferences and discussion among those attending. Persons attending such convention are required to abide by travel arrangements specified by Southland. Thus Southland controls and dictates substantially all facets of such a convention. Those who declined Southland's invitation to attend the convention received nothing of value. Neither does Southland give any cash or cash equivalent award in lieu of attendance at such a convention nor permit an invitee to designate a substitute invitee. Thus the controls and restrictions placed on attendance at such a convention prevent its having a fair market value in excess of a nominal amount.

Southland considers that an agent's wife plays an important role in his career. An insurance agent cannot work on a regular schedule and produce a satisfactory volume [fol. 11f] or kind of business. He must call on prospects at the convenience of the prospects, which necessarily involves irregular hours and absence from home at night and mealtime. Invariably the demands on an agent's professional life create a strained domestic situation unless the wife understands his work. An understanding and cooperative wife can and does increase the field of prospects for her husband, thereby increasing the volume of business of his employer as well as his own business. The insurance agent's wife's role in personal contacts, community projects, civic enterprises, and other areas of community life are of tremendous importance to the success or failure of the agent and therefore of his ultimate worth to himself and to his company. The wife can have a sphere of emphasis which may be narrow or wide, an area of acquaintance which may be narrow or great. If she plays an active part and understands her husband's work, her contribution will be greater. Therefore, the conventions held by Southland are so designed and prepared as to furnish a program which is also of instruction to the wife, whose attendance is highly desirable. So vital does Southland consider the

wife's part in its business that upon the employment of an agent the company requires an interview with the wife in the home to insure that she is made aware of the contribution which she may make to her husband's success. Southland has even distributed a booklet, *A New Partnership Has Been Formed*, evidencing its interest in stimulating the wife's role in the writing of insurance. Thus, in recognition of the wife's important role in a successful agent's career, Southland expects and urges the wives as well as the agents to attend such a convention inasmuch as Southland considers the wife's presence to be for a bona fide business purpose.

[fol. 11g] *Argument and Authorities*

1. Section 61 of the Internal Revenue Code defines gross income to include, among other things, "compensation for services including fees, commissions and similar items." Section 74 of the Internal Revenue Code defines gross income to include "amounts received as prizes or awards." Unless the benefits conferred by Southland upon taxpayers in respect of said convention trip be considered "compensation for services" or "prizes or awards", it is submitted that clearly no gross income would be realized by taxpayers in respect of said convention.

The fair value of transportation and subsistence furnished by an employer is not gross income to the recipient where furnished primarily for the benefit of the employer. See *Diamond* v. *Starr*, 116 F. Supp. 28 (DC, NDNY 1953); *Van Rosen*, 17 TC 834 (1951); *Arthur Benglia*, 36 BTA 838 (1937). The rule enunciated in these cases has been limited somewhat by Section 119 of the Internal Revenue Code of 1954 if the recipient is an "employee". However, C. J. Rudolph was an independent contractor rather than an employee in his relationship with Southland and therefore in determining whether the Rudolphs realized gross income by reason of Southland's furnishing to them transportation and subsistence in respect of this convention, the cases decided under the Internal Revenue Code of 1939 are applicable. Furthermore, these cases would likewise be applicable in determining whether Southland gave taxpayers

a prize or award by reason of their attendance at this convention.

[fol. 11h] If the recipient gets nothing that he can take, appropriate, use, or expand to his own dictates, it is not income notwithstanding that he may benefit thereby so long as such benefit is only incidental or secondary. *Van Rosen*, supra. "Income", for income tax purposes, is something of exchangeable value received by the recipient for his separate use, benefit, and disposal. *Midland Mutual Life Company* v. *Commissioner*, 83 F. 2d 629 (6th Cir., 1936), reversed on other grounds, 300 U.S. 216. A transaction whereby nothing of exchangeable value comes to or is received by the taxpayer does not create taxable income. *Hirsch* v. *Commissioner*, 115 F. 2d 656 (7th Cir., 1940).

There must be some power of disposition or power to procure payment to another in order to constitute income. *Helvering* v. *Horst*, 311 U.S. 112 (1940). There must be ability to enjoy or dispose of the gain before it is income since to be income the recipient must have control over its disposition. *Hulbert* v. *Commissioner*, 227 F. 2d 399 (7th Cir., 1955); *Paster* v. *Commissioner*, 245 F. 2d 381 (8th Cir., 1957). The test in determining whether payments to a taxpayer are income is whether such payments were received without restriction as to their disposition. *Clay Sewer Pipe Association* v. *Commissioner*, 139 F. 2d 130 (3rd Cir., 1943).

The doctrine of "constructive receipt" for income tax purposes should be cautiously and sparingly applied. *Commissioner* v. *Timken*, 141 F. 2d 625 (6th Cir., 1944). It has been said that the Government will not resort to sharp practice nor invoke technical construction or fiction which [fol. 11i] will manifestly thwart good faith intention of taxpayers for the purpose of visiting a taxable burden upon one who did not in fact, except by construction, derive any beneficial enjoyment from the transaction. *Randolph* v. *Commissioner*, 76 F. 2d 472 (8th Cir., 1935); *Bettendorf* v. *Commissioner*, 49 F. 2d 173 (8th Cir., 1931).

This last statement from the *Randolph* and *Bettendorf* cases epitomizes this case. It is fanciful fiction and technical construction to visit upon the the Rudolphs the burden of paying taxes on sums spent by Southland at its own

discretion and control without the consent or even consultation with the taxpayers. It was an expense the amount of which was unknown to the taxpayers and over which the taxpayers had no control. The taxpayers were under the compulsion of successfully performing their business for the employer in accepting the invitation of the employer to attend the convention, all arrangements of which were prepared and paid for by the employer.

Such conventions of life insurance companies are a part of the training program for their field representatives and are an ordinary and necessary expense of life insurance companies. In fact, Life Insurance Agency Management Association, an organization representing the agency departments of life insurance companies generally through the United States and Canada, has made studies of company practices in this regard and such studies have been published in three pamphlets, viz.: "Conventions" (1952), "Allowances for Transportation, Lodging and Meals to [fol. 11j] and from Company Conventions" (1956), and "Convention Qualification Changes" (1957). These studies show quite clearly the almost universal practice of life insurance companies in this regard and attest quite eloquently the desirability of such meetings for benefiting and advancing the interests of the company and the representatives of the company in attendance.

Taxpayers attended this convention primarily at the behest of Southland and it is clear that it was a business convention held by Southland to further its business and there was no intent by Southland that the benefit, if any, accruing to the Rudolphs be compensation or an award or prize. Accordingly, the taxpayers realized no gross income by reason of their attending said convention.

In the alternative, if the Rudolphs realized gross income by reason of said convention trip, the amount of such gross income is limited to $100, the fair market value of such trip. The Rudolphs would not have taken this trip had not Southland paid for it; it was not something they needed in the ordinary course of their lives and for which they would have made an expenditure in any event. Furthermore, their right or privilege to attend this convention was not salable or otherwise transferable and there were

substantial restrictions on even the manner in which they might enjoy such trip. Accordingly, under all the facts and circumstances, the fair market value of such trip was not in excess of $100. See Reg. Sec. 61-2(d)(1); Reg. Sec. 74-1(a)(2); *Reginald Turner*, 1954 TC Memo Op. Further, in the alternative, if the taxpayers realized gross income [fol. 11k] by reason of their attending said convention, irrespective of the amount thereof they are entitled to a deduction in the same amount against gross income for travel expenses incurred in connection with carrying on a trade or business.

Expenses paid or incurred by a taxpayer in attending a convention where he is benefiting or advancing the interests of his trade or business by such attendance are deductible expenses. Reg. Sec. 1.162-2(d). Likewise where a taxpayer's wife accompanies him on a business trip, expenses attributable to her travel are deductible where her presence on the trip has a bona fide business purpose. Reg. Sec. 1.162-2(c).

An expense does not have to be absolutely essential to qualify as a necessary expense if the expense was incurred in consummating a transaction beneficial to taxpayer's business. *Commissioner* v. *Pacific Mills*, 207 F. 2d 177 (1st Cir., 1953). "Ordinary and necessary expenses" are not necessarily habitual or normal expenses in the sense that the taxpayer will have to make them often. *Welch* v. *Helvering*, 290 U.S. 110 (1933). The term "ordinary and necessary expenses" however must be given its natural and common connotation. *Tinkoff* v. *Commissioner*, 120 F. 2d 564 (7th Cir., 1941). An ordinary expense may be one which happens but once in the taxpayer's lifetime if it is of common or frequent occurrence in the type of business in which the expenses are incurred. *Deputy* v. *DuPont*, 308 U.S. 488 (1940). The test of a deduction made as an ordinary and necessary expense in carrying on a trade or business is said to be its natural normality and soundness as a business expenditure in both nature and amount by general commercial standards in practical applications to the specific situation. *Byers* v. *Commissioner*, 199 F. 2d 273 (8th Cir., 1952). The evidence of customs and actions of organized professional organizations is [fol. 11l]

relevant to the issue of whether certain expenses of a member of that profession at a given time and place are ordinary and necessary in computing taxable income. *Lilly* v. *Commissioner*, 343 U.S. 90 (1952). The exigencies of business rather than personal convenience must be the motivating factor for the incurring of the expense in order for it to be deductible. *Bercau* v. *Commissioner*, 165 F. 2d 521 (4th Cir., 1948).

In order that the expense of travel while away from home in pursuit of a business may be deducted, the expense must be incurred while away from home and must be a reasonable expense necessary or appropriate to the development and pursuit of a trade or business. *Commissioner* v. *Flowers*, 326 U.S. 465 (1946). In this connection, the costs and expenses of attending a convention and other meetings have been held to be deductible in: *Wade H. Ellis*, 15 BTA 1075 (1929)—lawyer attending American Bar Association convention; *Marion D. Shutter*, 2 BTA 23 (1925)—clergyman attending convention of Universalist Church; *Alexander Silverman*, 6 BTA 1328 (1927)—university professor attending various scientific conventions; *Rita N. Callinan*, 1953 TC Memo Op.—secretary attending a convention of National Secretaries Association; *Charles O. Gunther, Jr.*, 1954 TC Memo Op.—accountant attending accountants' convention.

Consequently, if it should be determined that, contrary to taxpayers' contention, their attendance at such convention [fol. 11m] constituted gross income to the Rudolphs, they are entitled to a deduction in the same amount as such gross income by reason of the fact that attendance at such convention thereby constituted an ordinary and necessary expense of business constructively incurred by the taxpayers while away from home attending a convention or meeting which had a direct and substantial relationship between taxpayers' business and the convention; that such attendance was benefiting and advancing the business interest of the taxpayers' trade or business; that the convention was a business rather than a social, political, or other unrelated business purpose; and that Mrs. Rudolph's presence was for a bona fide business purpose.

[fol. 12]

IN THE UNITED STATES DISTRICT COURT

ANSWER—Filed January 7, 1960

Comes now the defendant, the United States of America, and in answer to the complaint admits, denies, and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the complaint.

2. Admits the allegations contained in paragraph 2 of the complaint, except denies that plaintiffs have overpaid their income taxes and interests for the calendar year 1956, denies that the assessment of income taxes against plaintiff for 1956 was erroneous and denies that retention of said income taxes by defendant is illegal.

3. Denies the allegations contained in paragraph 3 of the complaint, except admits that plaintiffs filed a timely joint Federal income tax return for 1956 and paid the income taxes shown thereon to be due in the amount of $1,150.33.

4. Admits the allegations contained in paragraph 4 of the complaint, except that the date of payment was September 8, 1958.

5. Admits the allegations contained in paragraph 5. Except insofar as otherwise specifically admitted, denies each and every allegation of fact and conclusion of law contained in plaintiffs' complaint for refund.

[fol. 13] 6. Denies each and every allegation contained in paragraph 6 of the complaint and the subparagraphs thereunder.

7. Admits the allegations contained in paragraph 7 of the complaint.

8. Denies the allegations contained in paragraph 8 of the complaint.

Wherefore, defendant prays that plaintiffs' complaint be dismissed, and that judgment be entered for defendant

together with its costs and such other relief as this Court may declare for defendant.

W. B. West, III, United States Attorney, W. E. Smith, Assistant United States Attorney.

In the United States Court of Appeals

Defendant's Answer to Plaintiffs' First Amended Original Complaint—Filed September 7, 1960

Defendant for its answer to the First Amended Original Complaint:

I—VIII.

Repeats and reiterates its answers as found in paragraphs 1 through 8 of its original answer.

[fol. 14]

IX.

Denies the allegations of paragraph IX.

Wherefore, defendant prays that this action be dismissed with costs assessed against the plaintiff.

W. B. West, III, United States Attorney, W. E. Smith, Assistant United States Attorney.

Certificate of Service (omitted in printing).

Note Re Interrogatories

Defendant's Interrogatories to the Plaintiff C. J. D. Rudolph;

Answer of Plaintiff C. J. D. Rudolph to Defendant's Interrogatories;

Exhibit "A", 1956 Convention Booklet;

Exhibit "B", Agent's Contract, Southland Life Insurance Co.;

Omitted from the Printed Record pursuant to Designations as to printing Record heretofore copied at page 1.

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[fol. 15] Government Exhibit 1, 1956 Qualification Rules;

Omitted from the Printed Record being the same as Gov. Ex. 1 hereinafter copied at page 114.

• • • • • • •

Defendant's Interrogatories to Plaintiff Mrs. Irma M. Rudolph;

Answer of Plaintiff Mrs. Irma M. Rudolph to Defendant's Interrogatories;

Omitted from the Printed Record pursuant to Designations as to Printing Record heretofore copied at page 1.

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In the District Court of the United States

For the Northern District of Texas,

Dallas Division

Statement of Evidence

Appearances:

Turner, White, Atwood, McLane & Francis, Dallas, Texas, By Mr. McElroy, Appearing for the Plaintiff;

L. W. Vaseliades, Assistant to the Attorney General, Washington, D. C., Appearing for the United States of America.

[fol. 16] C. J. D. Rudolph, being first duly sworn, examined in chief by Mr. McElroy, testified as follows:

Direct examination.

By Mr. McElroy:

Q. State your name, please.
A. C. J. D. Rudolph.

Q. Where do you live, Mr. Rudolph?
A. 3501 Purdue, Dallas, Texas.
Q. How long have you lived there?
A. Since 1940.
Q. Did you live in Dallas County before that time?
A. Yes, sir.
Q. How long have you lived in Dallas County?
A. Since 1930.
Q. Are you married?
A. Yes.
Q. Is your wife in the Court room with you today?
A. Yes, she is.
Q. When were you married?
A. In 1921.
Q. Do you have a family?
A. Yes, sir.
Q. Are the children married now?
A. One child, yes, sir.
Q. Now, by whom are you employed?
A. Southland Life Insurance Company.
Q. What do you do for Southland Life Insurance Company?
A. I am an agent selling insurance.
Q. When did you first start working as an agent for Southland?
A. On September 14, 1932.
[fol. 17] Q. Have you been working for Southland ever since 1932?
A. Yes.
Q. Now, in connection with this case I want to ask you whether or not you filed your federal income tax return for the calendar year 1956?
A. Yes.
Q. Do you remember when you filed that?
A. It was probably before April 15th in 1957.

Mr. McElroy: I will ask the Court reporter to mark this as an exhibit, and also these checks, and also this other instrument.

(Said instruments marked Plaintiff's Exhibits 1, 2, and 3.)

By Mr. McElroy:

Q. I will hand you what the Court reporter has marked Plaintiff's Exhibit 1. Will you tell us what that instrument is?

A. That is a copy of the return we filed with the Internal Revenue.

Q. That is the one you filed for the calendar year 1956?

A. Yes.

Q. Then I hand you Plaintiff's Exhibit 2, being four checks. I will ask you to tell us what those canceled checks are, please, sir.

A. These checks total the amount of the tax due on my 1956 return. I am required to file an estimated return and three of them are estimates and the final check is the final balance of the tax.

[fol. 18] Q. I will ask you if the first check of the Exhibit No. 2 is in the amount of $366.87?

A. Yes, sir.

Q. Did you pay that April 14, 1956?

A. Yes.

Q. Then is the second check in the amount of $366.87?

A. Yes.

Q. Did you pay that on June 15, 1956?

A. Yes.

Q. And the third check in the amount of $366.86?

A. Yes.

Q. Did you pay it on September 14th?

A. Yes.

Q. And the final check $49.73?

A. Yes.

Q. Did you pay it on April 10, 1957?

A. April 13th.

Q. Now, I hand you Plaintiff's Exhibit 3 and ask you if that is the instrument by which you amended your estimate of tax for the calendar year 1956?

A. This typed form is, is the one that contains the amendment.

Q. Will you tell us why it became necessary for you to file an amendment which resulted in your paying a smaller check for the fourth check for this calendar year?

A. In May, 1956, I had an operation for cancer and, naturally, my activities were somewhat curtailed for some months and my income was less than I had estimated.

Q. Now, Mr. Rudolph, after paying the tax shown by the checks that you show here, did the government, by and through its District Attorney, or the Internal Revenue, [fol. 19] assess and determine a net tax deficiency for you for the year 1956?

A. Yes, they did.

The Court: I take it the matters you ask about are not in issue; they are not controverted?

Mr. Vaseliades: No, we admit that deficiencies were assessed in the amounts alleged.

Mr. McElroy: Then, may I introduce the exhibits, if there is no controversy, in order to have them in the record?

The Court: Yes, you can do so, or they might be covered by stipulation, but go ahead.

Mr. McElroy: I will ask that this instrument be marked, and also this letter, and another letter, and this claim, and another instrument here which I have in my hand.

(Said instruments marked Plaintiff's Exhibits 4 through 8, inclusive.)

Mr. McElroy: Now, Your Honor, upon stipulation by counsel, and acting on the Court's instruction, without further evidence from the plaintiff, I now offer in evidence these exhibits, 1 through 4, inclusive, consisting of the jurisdictional phase of the case, No. 4 being the deficiency statement showing $137.09, being the tax plus $10.19. Then [fol. 20] Mr. Rudolph's check in payment of that sum of $137.09, which is the amount in controversy.

Then Exhibit 5 is the letter from the government to Mr. and Mrs. Rudolph in which the government states the notice of disallowance of his claim for refund.

And No. 6 is a letter of transmittal by a lawyer in our firm showing the claim for refund which was forwarded, and No. 7 is the claim for refund itself, and No. 8 is the complaint filed in this case, showing it was filed October 9, 1959.

Mr. Vaseliades: Of course we stipulate as to the admissibility of these documents but not as to the truth of any matters that might be contained therein.

The Court: Nor as to any conclusions that the Court might draw from them.

Mr. Vaseliades: Yes.

Mr. McElroy: I will also have this instrument marked.

(Said instrument marked Plaintiff's Exhibit 9.)

By Mr. McElroy:

Q. Now, Mr. Rudolph, I hand you Plaintiff's Exhibit 9. I will ask you if you will tell us what that instrument is?

A. That is my agency contract with Southland Life Insurance Company.

[fol. 21] Q. Is this the contract under which you went to work for Southland, and with modifications, have been working under it ever since?

A. That is right.

Mr. McElroy: We offer it in evidence.

(Said instrument offered in evidence, marked Plaintiff's Exhibit 9.)

By Mr. McElroy:

Q. Now, Mr. Rudolph, I want you to tell us about this convention, and the basis upon which you personally attended this convention.

A. One of the requirements for being eligible to attend the convention was we write at least $400,000.00 in life insurance. There is always a minimum set because only those that can write a reasonable amount of business would benefit from going to the convention.

Q. Now, after you received notice that you and your wife had qualified to attend tell us how the arrangements were made by which you went up there.

A. All the arrangements were made by Southland Life Insurance Company.

Q. Did you have anything to do with whether you went by train or airplane or automobile?

A. We had to go by train.

Q. Do you remember what railroad it was that carried you there?

A. I am not sure.

Q. Did you leave from Dallas?

A. Yes, sir, in two special trains.

Q. Did the trains take you to New York City?

[fol. 22] A. They took us to New Jersey and we ferried across to New York.

Q. Were all those arrangements made by Southland without consultation with you and your wife?

A. Yes.

Q. Were the accommodations by Southland, without consultation with you or your wife?

A. Yes.

Q. Was the time set by Southland, without talking with you?

A. Yes, sir.

Q. Now, with regard to the actual payment of the expenses, both as to transportation and as to your expenses in New York City, did you make these payments or did Southland make those payments?

A. The transportation and hotel and most of the other expenses were paid by Southland.

Q. Did Southland give you some pocket money to handle miscellaneous and other expenses?

A. They gave us a check for $30.00 with which my wife and I were to buy meals which had not been planned by Southland.

Q. When was that given to you?

A. Before we left Dallas.

Q. By check or cash?

A. In a check.

Q. Did you spend that money for the purposes for which Southland had given it to you?

A. Yes, sir.

Q. Now, with respect to this convention, did they have various speakers as part of a business program, once you arrived in New York City?

A. Yes.

Q. Can you tell us who those speakers were?

A. Well, I think I know all of them.

[fol. 23] Q. Tell us who they were, please.

A. Ben H. Carpenter, who at that time was vice-president.

Q. Executive vice president?

A. Yes, sir. John W. Carpenter, who was Chairman of the Board; Dan C. Williams, who was President of Southland Life, and Glenn Brooks; I don't remember what his title was.

Q. Was he the vice president and director of A & H Insurance?

A. That is right, and then we had a panel discussion which was headed by Herman Ford, in which four of the agents participated. One of them was Huffbarr, Jim Whitmeyer, Sully Woodum, and Johnny Wright.

Q. Now, was this begun on the morning after your arrival in New York City?

A. Yes, sir, it was that morning.

Q. At what hotel did you stay there?

A. The Waldorf-Astoria.

Q. And were these parts of the program put on at a meeting in that hotel?

A. Yes, sir.

Q. Then did you later attend a lunch at that hotel in New York?

A. Yes.

Q. Do you remember who delivered the talk at that time?

A. Norman Vincent Peale.

Q. In respect to the programs you have told us about and the speeches, did they have to do with telling you how you could enjoy the city, or did they have to do with the company business and telling you various matters in respect to the company's policy, and what had been done all through the past year?

[fol. 24] A. The talks were primarily on that altogether, and to help us in improving ourselves so we could do a better job selling for Southland Life.

Q. Was this convention, and were the programs represented to you by Southland Life as part of the agency training program of Southland?

Mr. Vaseliades: I had rather hear from the witness; they are very leading questions.

The Court: Well, there is no jury, and the Court will try to consider it in the light of your objection.

Mr. McElroy: Will you answer the question?

A. Will you repeat it?

By Mr. McElroy:

Q. I will ask you whether or not these various features at the convention and at the program were represented to you as being part of the agency training program?

A. Well, they are definitely a training program.

The Court: I take it that some officer of the company will testify to the purpose of the convention and the trip?

Mr. McElroy: Yes, Your Honor.

[fol. 25] The Court: So you need not go into the case as fully as you otherwise might, since you are going to offer them.

By Mr. McElroy:

Q. Was your attendance and the attendance of your wife at this convention required by Southland?

A. Yes.

Q. Now, if you had not attended do you suppose you would have been dismissed from their service, or would your non-attendance have been frowned upon, or what would have been the result?

A. Well, you are expected to go and enter into the programs that the company has for you. We have certain training programs we have to abide by, and these conventions are expected of the agents who write enough business to go.

Q. Did the convention itself promote your knowledge and your skill and your technique and ability as an insurance agent?

Mr. Vasiliades: I object to the nature of the question.

The Court: I might modify the question to this extent: Is it your opinion and your judgment that the training program given at this meeting was helpful in qualifying you for your service as an insurance man?

The Witness: Definitely; yes, sir.

[fol. 26] By Mr. McElroy:

Q. Tell us whether or not you had occasion up there to talk with other agents in respect to how they go about selling for Southland.

A. The panel was primarily that, the panel discussion was had by agents who had been successful, or done a successful job for Southland Life Insurance Company. And they not only told us how they did it, but they also told us to what extent their wives entered into helping them in their business, and then we rubbed elbows with other successful men and, naturally, when we do that we always have discussions on cases, how to close cases and what was recommended, and things of that kind.

The Court: What was the particular service you did for which this money was required?

The Witness: Well, I don't think it was a requirement, but you had to write a certain amount of business before they considered you well enough informed in the insurance business to grasp what they gave you there.

The Court: Did they give it to all of the employees?

The Witness: No.

The Court: If you had not taken the trip would you have been entitled to the cash money without making the trip?

[fol. 27] The Witness: No.

The Court: Go ahead.

By Mr. McElroy:

Q. Now, the planned part of this convention in regard to the speeches and the program you have told us about covered a great part of the time you were there, or not a great part of the time you were there?

A. Well, it depends on what you call a great part; the program was balanced.

Q. What I am getting at is this: In addition to the official formal program of the convention did you have occasion in New York City, and with these other officials and agents, to talk to them informally from time to time?

A. Yes, sir, not only in New York City, but on the train up and back.

Q. As a matter of fact, the Southland sometimes has articles appearing in its company organs or literature, to show how one agent benefits from talks with another agent?

A. Yes.

Q. And did that occur in New York City?

A. Yes.

Q. What do we mean when we hear, "It worked for me;" what is meant by that?

A. Well, what works for one agent very often works for another. If an agent works a certain way, calls on a certain type person, develops them in a certain way, those things are always brought out, and some agent may do it different from what I do, and it may help me.

[fol. 28] Q. And are there better facilities in obtaining that type knowledge at a convention than working here in Dallas trying to sell insurance?

A. There is no other way you can get that information.

Q. Tell us whether or not the various plans, and the various programs, and the evening at the Copacabana prevented you from attending those business programs, or instructions, or information that the company has sought to achieve.

A. The company planned those events in such way that they would not interfere with the business, and they did not.

Q. Now, will you tell us as briefly as you can, and we will call on the company's philosophy with reference to your wife's cooperation with you as an agent working for the company.

The Court: Let's see if I understand your question. Do you want him to tell the company's philosophy and reason for taking his wife?

Mr. McElroy: In so far as he would know as an agent.

The Court: I believe I will exclude that.

By Mr. McElroy:

Q. Have you attended various conventions by Southland in the past?

A. Yes.

Q. Has your wife attended those conventions with you?

[fol. 29] A. Yes.

Q. Did she attend this convention with you?

A. Yes, sir.

Q. Did she attend the various speeches and the official program you have told us about?

A. Yes, the wives were required to.

Q. She sat through the business portion of it and was not away during those times?

A. That is correct.

Q. Was there any special feature for her, involving a lady's fashion show?

A. She didn't attend that.

Q. What was she doing at that time?

A. It was our only opportunity to visit the United Nations Building and we went over there instead.

Q. During the time you were trying to talk with these other agents as to how they were selling and conducting their business was your wife then with you?

A. Most of the time.

Q. The conventions are not held annually, are they?

A. No, sir.

Q. How often does Southland have a convention?

A. About every 18 months.

Q. During the time prior to the time you went to the convention in New York would there be various reports of a periodical nature sent to your home by Southland?

A. Yes.

Q. Would your wife read those?

A. Yes, sir.

Q. Would the company, in this literature, treat your wife as an employee just like yourself?

A. The wife is considered a partner of the agent.

[fol. 30] The Court: Just one question.

Did the Southland have other representatives there besides you?

The Witness: Yes, sir.

The Court: About how many?

The Witness: I think altogether there were 293 in attendance at the convention.

The Court: All employees of Southland?

The Witness: Yes, sir.

The Court: Why couldn't they have had the meeting in Dallas instead of New York City?

The Witness: I can't answer that.

The Court: I was under the impression that a number of insurance companies had a convention and that you perhaps represented the Southland at the convention, but it was just a convention of the employees of Southland?

[fol. 31] The Witness: Agents and employees.

Mr. McElroy: We will answer Your Honor's questions through some of Southland's officials.

The Court: I think you are going into unnecessary details. Much of it will be inferred from the testimony.

By Mr. McElroy:

Q. I believe the Court has covered this, but if you had not gone to the convention would you have received another trip some other time?

A. I would have received nothing.

Q. Would you have received any money?

A. No, sir.

Q. Any pension or fringe benefits?

A. No.

Q. You didn't determine where this convention would be held, did you?

A. No, sir.

Q. Did you have any control at all over the program in New York City?

A. No, sir.

Q. Did you have any control over the time of the meeting in New York City, or the place of the meeting up there?

A. No, sir.

Q. Do you know of your own knowledge that this type of convention is a common occurrence in the life insurance industry?

A. Yes, I understand all companies have some program of that type.

[fol. 32] Q. I believe you told us in this year, near the end of that year you were suffering from a serious disease?

A. In May of that year.

Q. Can you tell us whether or not you had so recovered

that you would ordinarily have been taking a vacation at that time, rather than staying in Dallas?

A. No, I talked with my doctor before I took this convention trip and he said he thought it would be all right for me to go, but I wouldn't have gone anywhere else.

Q. You would not have gone for a vacation at that time?

A. No.

Q. By way of taking vacations, what do you like to do?

The Court: Are you anticipating something they were going to do? If you are, let them bring it out.

Mr. McElroy: All right, Your Honor, we are through with this witness.

Cross examination.

By Mr. Vaseliades:

Q. At this time you had been an agent selling insurance for Southland about 28 years?

A. Yes.

Q. Did you sell insurance before that time?

A. No.

[fol. 33] Q. Your counsel has offered into evidence as Plaintiff's Exhibit 6 a copy of that contract, approximately with the terms of that contract?

A. Yes, sir.

Q. Is there any provision in the contract requiring you to attend conventions?

A. No.

Q. How many conventions have you attended, approximately?

A. I know I have attended ten since 1938; I am not sure prior to that.

Q. Did you attend a convention in 1940 at Estes Park, Colorado?

A. Yes.

Q. Did your wife attend?

A. She was ill at that time.

Q. Your wife did not attend?

A. No.

Q. Did you attend one the following year in Mexico City?

A. Yes.

Q. How about one in 1949, in Havana, Cuba; did you attend that?

A. Yes.

Q. Did you attend the one that was held in Canada in 1953?

A. Yes.

Q. Did your wife attend?

A. Yes.

Q. And another one in New Orleans in 1954, is that right?

A. Yes, sir.

Q. Did you attend that one?

A. Yes.

[fol. 34] Q. Now, this particular convention in New York City, as I understand it you left Dallas by train on December 11th, is that right?

A. I am not sure of the date; we left by train.

Q. How many days all told did this convention trip occupy?

A. Eight or nine.

Q. Eight or nine days?

A. Yes, sir.

Q. How many business sessions were scheduled during those days?

A. We were not in New York during all those days.

Q. I said how many business sessions were scheduled?

A. One, and a luncheon.

Q. How long did that last?

A. All morning, and we ran over lunch time. I am not sure, three or four hours.

Q. By all morning do you mean from 9:30 until noon?

A. I am not sure when they started.

Q. Did they start at 7:00 in the morning?

A. No.

Q. Was it later than that?

A. It was a reasonable time; I am not sure when.

Q. That was on the day after you arrived in New York City?

A. No, we arrived in New York City after dark the day before.

Q. Then the next day you had this business meeting that lasted for two or three hours?

A. Yes, sir, at least three; probably three or four.

Q. You didn't stop for lunch?

A. We had lunch but it was late when we got it.

[fol. 35] Q. Now, other than those hours there, were there any other business sessions during this convention?

A. The noon luncheon.

Q. That noon luncheon on the same day, is that what you refer to?

A. I think it was the same day.

Q. You testified you had no control over the activities. How was it you and your wife got out of attending this ladies luncheon?

A. It was not a luncheon, it was a breakfast. It was a fashion show that had nothing to do with business.

Q. In other words, it was not mandatory for her to go?

A. It was a matter of choice; none of them had to go.

Q. And you exercised your choice, you and your wife, and she didn't attend?

A. That is correct.

Q. Going back for a minute about how you qualified to attend this convention. When did you first learn that there would be such a convention in New York City?

A. I am not sure of the date. Sometimes they announce that at the preceding convention, but I am not sure whether this one was announced or not.

Mr. Vaseliades: Mark this as Government's Exhibit 1.

(Said instrument marked Government's Exhibit No. 1.)

[fol. 36] By Mr. Vaseliades:

Q. Can you give us an approximation of how long before the convention you were aware the convention would be held in New York City?

A. I don't remember that.

Q. I show you what has been marked as Government's Exhibit 1 and ask you if you can identify that.

A. Yes, sir, this looks like a photostatic copy of a book in which they set forth the amount of business we were required to write in order to be eligible to go.

Q. Did you receive such a copy?
A. I am sure I did.
Q. When did you receive that, approximately?
A. I just don't know.

Mr. Vasiliades: We offer in evidence Government's Exhibit 1.

By Mr. Vasiliades:

Q. Did you read over these rules, Mr. Rudolph?
A. Yes.
Q. Why?
A. Well, any time we get any correspondence it is customary we read what the company wants us to know.
Q. Well, you see on the front page in big writing "1956 Convention Qualification Rules", is that correct?
A. Yes.
Q. Now, was your interest aroused in the convention for 1956?
A. Well, naturally, as they always are.
Q. Did you look forward to go to this convention?
A. Sure.
Q. Did you talk to your wife about it as soon as you found out about it?
[fol. 37] A. Sure.
Q. Was she anxious to go?
A. Yes.
Q. Did you plan for it?
A. Yes.
Q. Did you have any difficulty in meeting the requirements to qualify for the convention?
A. To some extent, yes, because of my physical condition.
Q. You felt, however, that you desired to go to this convention, did you not?
A. Yes.
Q. Did you make additional efforts to meet the qualifications in order to attend the convention?
A. I don't know that I made undue effort.
Q. I didn't say undue effort.
A. You said special.

Q. You said you were having trouble meeting the qualifications.

A. I was in the hospital for two weeks, then I had to take out time, about two or three months more. With that much time out it is not as easy as it would have been otherwise.

Q. There was a time when you were worrying about whether or not you would make the qualifications?

A. Not too much worry; I wrote more than the minimum requirement.

The Court: Did the company pay you a bonus at the end of the year or during the year at any time in addition to this trip?

The Witness: No, sir.

[fol. 38] By Mr. Vaseliades:

Q. After this business session of one day that lasted from 9:00 or 9:30 until 12:00, or through the lunch period, what happened that afternoon?

A. I believe they had a sightseeing trip planned for us at that time.

Q. And on that sightseeing tour you went by Rockefeller Center and Central Park and Grant's Tomb, and all of those places; did you pass all those places?

A. We didn't go as far as we intended to because it was pouring down rain during that trip.

Q. You got to see downtown Manhattan, did you not?

A. We saw that on the way to the hotel.

Q. Did you go past the United Nations Building?

A. No.

Q. Well, after you returned to the hotel what was the next event on this schedule?

A. I think it was Copacabana.

Q. I don't understand you.

A. I think it was the evening at Copacabana, I am not sure; I think it was that evening.

Q. Well, would it refresh your memory if I told you the evening at the Copacabana was the following day?

A. I guess I just probably had a free evening, then.

Q. There was nothing planned as far as you can recollect?

A. No.

Q. How about the next day, December 15th, what was scheduled then?

A. What day of the week was it?

Q. This is the day after your sightseeing tour, that is when the breakfast and the fashion show for the ladies was scheduled, was it not?

[fol. 39] A. Yes.

Q. And you didn't attend that?

A. No.

Q. Neither you or your wife?

A. No.

Q. What did you do instead? I believe you said you went to the United Nations?

A. Yes.

Q. How long were you at the United Nations?

A. We took the tour.

Q. Did it take more than the morning?

A. Yes.

Q. Where did you have lunch?

A. I don't remember.

Q. It was not a planned event?

A. No.

Q. You paid for your lunch out of the money which the company had advanced you?

A. That is right.

Q. And that evening you attended the Copacabana, is that correct?

A. On the 15th?

Q. Yes.

A. Yes.

Q. Was there a show available there for you to see?

A. We went at an early hour, but they had some entertainment.

Q. What did it consist of?

A. They had singers and dancers.

Q. How long were you at the Copacabana?

A. I would say a couple of hours; we had to get out of there to make room for the regular crowd.

Q. In other words, that entire day there was no business session, is that correct?

[fol. 40] A. I think that is right.

Q. How about the next day; what was on the schedule?

A. That is when we left for home.

Q. What time did you leave for home?

A. We left the hotel at, I imagine, about 9:00 o'clock.

Q. So, then, the only business session was this morning, the day after your arrival, is that correct?

A. The only business session in New York was there.

Q. Who else was along? I mean what type of individuals were in attendance at this convention?

A. The agents and the officials of the company.

Q. Where were they from, as a rule?

A. The officials were mostly from Dallas; the agents were from over the entire territory.

Q. Describe the territory for me. How much geography, or what country does it cover?

A. I am not just sure how many states there are.

Q. The southwest?

A. It goes from coast to coast.

Q. Where were the agents from?

A. I remember some from the west coast; most of them from Texas and Oklahoma.

Q. Most of them from Texas and Oklahoma?

A. And Arkansas.

Q. Did you take anyone with you besides your wife to this convention?

A. No.

Q. You don't consider your wife as an employee of yours, do you?

A. An employee of mine?

Q. Yes.

A. No.

[fol. 41] Q. You could have qualified for this trip regardless of whether you were married or single, could you not?

A. Yes, sir.

Q. Were there any single agents there?

A. Yes.

Q. And you could have qualified for this trip regardless of what your wife did or failed to do, could you not?

A. I will say this: The agents that were singled out to write the same amount of business I did.

Q. You, as a married man, could qualify for this convention irrespective of what your wife did or failed to do, could you not?

A. She could help me.

Q. Will you answer the question?

A. I could have gone, yes, without her going.

Q. You could have qualified irrespective of what your wife did or failed to do?

Mr. McElroy: He has testified his wife helps him, and I believe that is an answer to the question.

The Court: There is evidence to show that the presence of the wife along with the husband tended, perhaps, to interest her in his business and thereby indirectly give him some encouragement.

I will hear the evidence.

By Mr. Vasiliades:

Q. How long have you been married?

A. Since 1921.

Q. 39 years?

A. Yes, sir.

[fol. 42] Q. Your wife is a good partner, I am sure, is she not?

A. I have an office at home and she helps me.

Q. Are you satisfied with your job as an agent of Southland?

A. Yes.

Q. Are you planning to retire soon, Mr. Rudolph?

A. No.

Q. Now, in Dallas you have ample opportunity to converse with your cohorts and superiors in the insurance business, do you not?

A. Yes.

Q. Do you actually do so?

A. Yes, sir.

Q. There is nothing unusual about these opportunities, so to speak, in New York City, as far as opportunities to converse and discuss the insurance business?

A. Yes, there is.

Q. Unusual, in that you have to work 'em in around the social and entertaining, is that right?

A. No, sir. What is unusual about it is that our largest producers do not live in Dallas.

Q. Where do the largest producers live?

A. In Austin, Tyler, Houston, and when they get to Dallas I don't get a chance to see them.

Q. What type agent are you?

A. Selling insurance.

Q. Are you an ordinary agent?

A. Yes, sir, ordinary agent.

Q. You are not a combination agent?

A. No.

Q. Do you have any supervisory capacity?

A. No.

[fol. 43] Q. Now, were you periodically informed in any manner as to your standing, as far as this test of qualification goes?

A. Yes, sir, every month.

Q. Every month?

A. Yes, sir.

Q. How were you informed?

A. They get out a bulletin showing the standing.

Q. They show the standing of all of the agents as to how much insurance they have sold?

A. No.

Q. How is it handled?

A. It shows those that have actually written enough to be invited.

Q. Was this posted publicly?

A. No; it was mailed to us in monthly magazines.

Q. In a monthly magazine?

A. Yes, sir, we get it from the company.

Q. These magazines went to all of the agents?

A. At their homes.

Q. It was an incentive to you to get your name in there, was it not?

A. I was glad to see it in there when it got there.

Q. In fact, this whole trip was an incentive to you, was it not?

A. Not altogether.

Q. I assume by that you mean partially?

A. Naturally, you liked to be among the top men of the company, when the top men were invited.

Q. In other words, this was something you would receive if you produced, is that correct?

A. It was not something I received because I produced; I had to produce a certain amount in order to receive it.

[fol. 44] The Court: Did all of the agents go on the trip?

The Witness: Only those that were considered good enough.

The Court: Now, there was to be a distinction between an agent that could go and one that could not go. What was that distinction?

The Witness: Well, they had to be capable of writing a certain amount of business, just so they made the full $400,000.00.

The Court: It was conditioned on the amount of business done?

The Witness: Yes, sir.

By Mr. Vasilades:

Q. You say you didn't attend at least one convention in the past. What penalty did you have to pay for that?

A. I didn't say that; I have attended all conventions.

Q. You attended all of the conventions since 1932?

A. Yes.

Q. Didn't you testify you couldn't recall past 1940 whether you attended or not?

A. I said I didn't know how many were held, but I attended all of them.

[fol. 45] Q. Anyway, now you are testifying you did attend them all?

A. I didn't say I had not attended.

Q. Well, have you attended all of them or not?

A. I attended all of them.

Q. How many has your wife attended?

A. All but two.

Q. Now, suppose you did not attend this convention in 1956. You had been working for Southland 24 years in 1956, is that right?

A. Yes.

Q. How was your production figures compared with those of your contemporaries?

A. I am not aware of their production figures.

Q. Now, you say that this was not a requirement of you, I believe you testified. Would you call it a penalty?

A. No.

Q. In other words, they didn't have to carry you up to New York City screaming and kicking?

A. Sure.

Q. Would you go again tomorrow if it were offered?

A. If I had my expenses paid, yes, sir.

Mr. Vaseliades: That is all.

Redirect examination.

By Mr. McElroy:

Q. Counsel asked you about your agency contract. Tell us whether or not it actually provides you must comply with the rules and regulations of the company.

A. They can terminate the contract on short notice.

[fol. 46] Q. Is that also a fact, do you have any contract with Southland whereby they cannot fire you or where they have to employ you any number of years?

A. No.

Q. Would we generally call the contract terminable at will?

A. Yes, I think that is it.

Q. Would it follow you would be interested in maintaining the good will of the company toward you?

A. Yes.

Q. And try to attend their conventions if they ask you to?

A. Yes.

Q. If you had wanted to take a vacation trip somewhere would you have gone where the company personnel were?

A. Whenever I take a trip I like to get away from it all, not have any schedule, and do as I please.

Q. At this convention was there any drinking or consumption of alcoholic beverages paid for by Southland?

A. No, sir, definitely not.

Q. Southland did not have a waiter bring in the champagne and the scotch and sour and the rest of it?

A. No, sir.

Q. Tell us how your wife helps you in your business and at this convention.

A. She is sort of my eyes and ears; she knows people who are buying new homes, and new babies; sometimes introduces me to people I would like to meet, and in a general way, and then she helps me with my records.

Q. Does she make an attempt to inform herself as to the company's practices and policies and methods of handling [fol. 47] its business and selling, from a technical sense?

A. Not selling; she wouldn't make a very good saleslady, but she does know what type of people need insurance and advice.

Q. If a convention was held in Dallas, or without a convention, counsel asked you about your opportunity of conversing here in Dallas with your cohorts and officials. Tell us whether in getting away from Dallas and going to a place like New York City, would your interest be stimulated in the company's business?

A. Definitely, yes, sir.

Q. At such a convention in such a city would you be more likely to be interested in talking with various agents as to how they did their business?

A. We have more of an opportunity to.

Q. Would you actually have more time away from your home to devote to the company's affairs, talking to these people in groups?

A. Yes, sir. If a convention was held here perhaps I would spend about half my time in taking care of my business here.

Mr. McElroy: That is all.

Recross examination.

By Mr. Vaseliades:

Q. Mr. Rudolph, how long a vacation do you normally take?

A. It varies; a week or two weeks.

Q. Do you have a favorite spot you go to?

A. I visit my sister in Indiana frequently.

Q. Anywhere else?
[fol. 48] A. No.
Q. You go to Indiana to see your folks?
A. Sometimes.
Q. How about the other times?
A. I just get in the car and drive.
Q. Where have you ended up occasionally?
A. Arkansas, Louisiana; not very far.
Q. Do you know why supper in New York City was held at the Copacabana Night Club?
A. No.

Mr. Vaseliades: That is all.

Kenneth B. Skinner, being first duly sworn, examined in chief by Mr. McElroy, testified as follows:

Direct examination.

By Mr. McElroy:

Q. State your name.
A. Kenneth B. Skinner.
Q. Where do you live?
A. Dallas, Texas.
Q. Wher abouts?
A. 6131 Meadow Road.
Q. How long have you lived in Dallas County?
A. Approximately 20 years; I am not sure.
Q. Are you married?
A. Yes.
Q. By whom are you employed?
A. Southland Life Insurance Company.
[fol. 49] Q. How long have you been employed by Southland?
A. Approximately 15 years.
Q. What is your position with Southland?
A. Vice president and agency director.
Q. In connection with the discharge of your duties with Southland did you have occasion to work up the various details of the convention held in New York City in 1956?

A. Yes, I did.

Mr. McElroy: Mark these instruments.

(Said instruments marked Plaintiff's Exhibits 10 and 11.)

By Mr. McElroy:

Q. Mr. Skinner, I hand you what the Court reporter has marked Plaintiff's Exhibit 10. I will ask you to look at that exhibit and tell us what it is.

A. This is a brief schedule of events in New York City at the time of this convention.

Mr. McElroy: I offer Plaintiff's Exhibit 10 in evidence.

By Mr. McElroy:

Q. Did you, along with other officials at Southland, assist in the preparation of that schedule of events at the convention?

A. Yes.

Q. I will ask you to look at this instrument, Plaintiff's Exhibit 11, and tell us what that is.

[fol. 50] A. That is a schedule of the morning meeting, Friday morning, December 14th, in New York City.

Mr. McElroy: I offer in evidence Plaintiff's Exhibit 11.

The Court: The address of welcome was by Mr. Carpenter?

The Witness: As I recall, yes, sir.

The Court: He lives in Dallas?

The Witness: Yes, sir.

By Mr. McElroy:

Q. Mr. Skinner, will you tell us what the purpose was of holding this convention in New York City in 1956?

A. The purpose of the convention was to have the opportunity or method of communications to our sales force as to the company's objectives and plans, and the exchange of ideas in the methods of successfully selling life insurance.

Q. Tell us whether or not you were intending to single out certain men and award them with a prize or an award of some kind.

A. That was not the purpose.

Q. Of course, if the man actually enjoyed themselves on this trip you wouldn't object to that?

A. No, sir, that would be gratifying, if they did enjoy it. [fol. 51] Q. Would it be a better meeting if along with the exchange of ideas and that sort of thing at the convention, you would also have some moments of entertainment and pleasant surroundings?

A. In my opinion it would make it more effective, yes.

Mr. McElroy: Mark these instruments.

(Said instruments marked Plaintiff's Exhibits 12, 13, 14, and 15.)

By Mr. McElroy:

Q. I am going to hand you Plaintiff's Exhibit 12. I will ask you whether or not this instrument was prepared under your supervision and instruction.

A. Yes, it was.

Q. And was it sent to you by an official at Southland?

A. Sent from an employee.

Q. What is the nature of this instrument?

A. It is a memorandum to me giving the number of men we have in various status of employment with the company, which attended the convention in New York in 1956, that is, as agents, field assistants, managers, office officials, and different categories.

Q. Do these figures show that the wives normally responded to the invitation by the company and attended?

A. Yes, it shows 151 men attended and 142 wives attended.

Q. Do you know whether or not the men who are not shown to have attended with their wives are all married?

[fol. 52] A. I know some are single; I don't know the exact number.

Q. Tell us whether or not in your opinion as an agency director for Southland these figures show or indicate to you that the wives regard their attendance as being important to their husbands and to the company.

Mr. Vaseliades: I object to that. I don't see how this witness can testify as to what the wives think. If they

chose to have the testimony of the wives I think that might be different, but this witness is not a wife.

The Court: Well, sometimes men think they know what their wives think. I am not sure what the purpose is, but I am hearing it for whatever it is worth.

Go ahead; I will hear you.

By Mr. McElroy:

Q. Do the fiures indicate to you whether or not the attendance of the wives was considered important?

A. It indicates to me that it was considered important, and apparently the wives so considered it because practically all of them did attend.

Mr. McElroy: I offer the exhibit in evidence.

Mr. McElroy: I will say to the Court in this connection that although Mrs. Rudolph is here in the Court room, the wife of the taxpayer, we do not intend to call her as a witness, primarily for reasons of her health, but if [fol. 53] the Government wants to call her she is here and will be glad to answer any questions they put to her.

Mr. Vasiliades: But this witness testified about the wives' attitudes and opinions and so forth.

The Court: Well, the Court is weighing it.

Mr. Vasiliades: It is an attempt to have me call Mrs. Rudolph as a witness, and when he gets the testimony in through a third party I am denied the opportunity to cross examine.

The Court: We will have to get down to the question.

Mr. McElroy: Actually, I have no question.

The Court: I don't think the evidence is admissible. I am admitting it, however.

Now, as to this letter, this is a letter signed by the agency secretary, addressed to "Dear Ken." Is that you?

The Witness: Yes.

The Court: It is a breakdown of the 293 Southland people who attended the New York convention in 1956. Agents, [fol. 54] men, 102; wives 97; salaried field assistants 3; wives 3; assistant managers 2 and wives 2; manager, 17 wives 17; officers 27, wives 23, a total of 151 agents and wives number 142.

Now, this mentions the classification breakdown. I believe it is in evidence here that some of the agents were eligible to go and some were not. What was it made an agent eligible to attend one of these conventions?

The Witness: He had to be invited by the company to go.

The Court: What was it that induced the company to extend these invitations?

The Witness: We were induced to have the convention and invite the agents to the convention for reasons of instructions.

The Court: Did the amount of business produced control the matter?

The Witness: To a very great extent. It was a consideration, and a very important consideration.

The Court: Say a man produced during the year $20,000,00 worth of business and another one produced $80,000,00 worth or $100,000,00 worth; was there any limit on the amount a man had to produce to get into this group? [fol. 55] The Witness: Yes, there was a certain minimum amount an agent had to produce in order to be considered for the trip.

The Court: Do you remember the amount?

The Witness: It varied, depending on the length of time he had been under contract.

The Court: What would you say would be the minimum?

The Witness: I believe there were some that attended who had produced as low as $10,000,00 or less; I don't recall for sure on that.

The Court: Now, did you ever hold one of these conventions here in Dallas?

The Witness: Since I have been with the company we have held one here, which was last year.

The Court: Now, you have held them, I believe, in Denver?

The Witness: I don't recall Denver.

The Court: One in New York?

[fol. 56] The Witness: Yes, sir.

The Court: And one in Havana, Cuba?

The Witness: Yes.

The Court: And one in the City of Mexico?

The Witness: Yes.

The Court: Do you recall any other places they have been held?

The Witness: New Orleans, Houston, San Antonio, Coronado, California. I believe that is all that have been held during the time I have been with the company. That is all I recall offhand.

The Court: All right. Take the witness.

By Mr. McElroy:

Q. What is Mr. Edmondson's position with the company?

A. He is agency secretary.

Q. In that position did he have available to him the various dollar costs of the various items of expense for this convention?

A. Yes, sir.

[fol. 57] Q. Was he able to determine for you the amount of cost that would be attributable to transportation?

A. Yes.

Q. And to entertainment?

A. Yes.

Q. I will ask you if Plaintiff's Exhibit 13 is a breakdown showing the average cost per person, and per couple, attending the convention of those various expenses paid by Southland?

A. Yes, it is.

Mr. McElroy: I introduce it into evidence as Exhibit 13.

Mr. Vasiliades: We agree that this document is admissible as an interoffice memo of the company, but we object if it is being introduced to show the truth of the matter stated therein.

The Court: If we eliminate the truth therein shown you might as well have a blank sheet.

Mr. Vasiliades: I would say the same thing.

The Court: It says here the average cost is $543.80. Is that the amount on which the income tax is sought to be collected?

Mr. McElroy: Yes, Your Honor, as best we could calculate it for the individual involved.

[fol. 58] Mr. Vasiliades: I would say actually $560.00, and I think we did stipulate that that amount was correct.

Mr. McElroy: We stipulated $560.00, but I think if you will look at the bottom paragraph you will see an additional expense of $17.00 which I added on to the $543.00.

The Court: As I understand it, you have already stipulated it and the tax has been paid and you are suing for the return of that exact amount, is that correct?

Mr. McElroy: That is correct.

The Court: Then you are suing back for what you have paid?

Mr. McElroy: Yes.

The Court: If that amount is stipulated, then what help does this paper give us?

Mr. McElroy: I want to show Your Honor he referred to that and testified as to each of those items, and I want to show how little of that $560.00 was actually spent on entertainment. Most of that is business expense. I want to show how that $560.00 was actually spent by Southland.

[fol. 59] Mr. Vasiliades: We are not challenging whether this is a business expense to Southland; we are only concerned with whether it is income to Mr. Rudolph.

The Court: You are coming down to where the Court has to draw a conclusion here. For instance, take the round trip fare, $119.40. Now, the question is, was that $119.40 a part of the expenses for entertainment, was the trip for entertainment, was the meeting for entertainment, or was the meeting for a vacation and help as an agent, so I think after all it is a question of a conclusion.

I will admit it into evidence, but I don't see the materiality of it, since you are not suing for these items.

Mr. McElroy: Counsel is—

The Court: I have admitted it, so go ahead.

By Mr. McElroy:

Q. I hand you Plaintiff's Exhibit 14. I will ask you to tell us what this instrument is.

A. This is a copy of my letter to Dr. Norman Vincent Peale concerning the address he was to make to our group.

Q. Did you tell him the kind of talk you wanted him to make at this program?

A. Yes, I gave him the general background information and the type meeting, and made suggestions as to the theme I would like for him to speak on.

[fol. 60] Q. Did that letter suggest the purpose of the meeting you were hoping would be achieved in New York?

A. Yes, sir, it does.

Mr. McElroy: I offer in evidence Plaintiff's Exhibit 14.

By Mr. McElroy:

Q. Did you hear Dr. Norman Vincent Peale's address to that convention?

A. Yes, I did.

Q. Did he seem to tie in his remarks as best he could with the instruction given to him by that letter?

A. Yes, he did; he did a better job than I had hoped he would.

Q. What was the degree of attendance at that talk?

A. I would say every one there, there must have been 99 per cent. I am not aware of any absentees.

The Court: Is this the Dr. Peale whose name appears in the papers over the Nation?

The Witness: Yes.

The Court: Did he tell you anything about insurance, or did he talk about good morals and religion, and so forth?

The Witness: He talked about good morals and religion and tied that into how the well ordered life would contribute to success in any endeavor. He did mention something [fol. 61] specifically about the work of an insurance man. Apparently, he knew more about it than I did.

The Court: Go ahead.

By Mr. McElroy:

Q. Do you find the type of talk Dr. Peale gave helps to improve the morale of your agency force?

A. Yes, I think it boosts their morale in knowing that the company produced that type program and are interested in offering that type of information, and is also a great source of improving the morale and knowledge that an agent needs for successful work in selling.

The Court: I believe Dr. Peale has lectured more than once here in Dallas?

The Witness: Yes, sir, but I haven't heard him.

By Mr. McElroy:

Q. I hand you Plaintiff's Exhibit 15, and you will notice it is a letter addressed to "John Doe"; also a bulletin entitled "A New Partner Has Been Formed."

Will you tell us what that consists of?

A. This is a letter addressed to the wife of an agent, a new agent, as we make the contract with him. This letter is sent to his wife within a few days after the contract, enclosing this booklet explaining to her how she can help her husband in the life insurance business.

[fol. 62] Mr. McElroy: I offer it in evidence as Plaintiff's Exhibit 15.

By Mr. McElroy:

Q. Please tell us, as briefly as you can and yet in detail, how you as agency director for Southland attempt to integrate the wives' performance with the performance of agents in the life insurance business.

A. One of the important functions we have in mind is the attendance at these conventions. In addition to that communication, occasionally there are letters that will be written to the wife concerning any special sales effort that might be desired or promoted. The company has a monthly publication for the agents and employees that is mailed to their homes so the wife will have a convenient opportunity to see the magazine and read it.

At most of our convention program, we have some specific reference to the wife's work, and in quite a few of the convention programs—we have had wives appear on the program.

Q. Suppose you didn't have the wives and didn't seek to require their attendance at a convention, would there be some danger that your meetings and conventions would kind of degenerate into stag affairs, where the whole purpose of the meeting would be lost?

A. I think that would definitely be a tendency.

Q. Tell us whether or not in conducting this convention for Southland you believe, from your experience in industry, you are merely fitting this into the common industrial practice?

A. Yes, it is my impression that these conventions are held by most, if not all, other life insurance companies; therefore, it proves to be a very worthwhile and profitable endeavor for the company. We think it serves a worthwhile purpose for the Southland Life, is the reason we conduct them.

Q. As agency director, does that mean Mr. Rudolph is under your direction?

A. Yes.

Q. Suppose he didn't go to this convention, as an agency director, would you give him something else?

A. No, sir.

Q. Give him anything of value?

A. No, sir.

Q. Give him a trip or anything, if he might want to take it?

A. No.

Q. Any fringe benefit at all?

A. No, sir.

Q. As a matter of fact, rather than giving him something else if he didn't go, as agency supervisor and director, would you be displeased if he didn't have an adequate reason?

A. Yes, I would be. When an agent indicates, he is not going to be able to go I inquire as to the reasons why and explain to him he is expected to be there, and if he doesn't have a proper reason it would be looked upon with serious displeasure.

Q. Did Mr. Rudolph, or any other agent attending this convention, have any control of the convention?

A. No, sir.

Q. Did he have anything to do with controlling the program?

A. No, sir.

Q. On the hours?

A. No, sir.

Q. Or when he had to go some place or get up?

A. I suppose he would control when he got up, but he was expected to be there at the given times published in the program.

[fol. 64] Q. He didn't have any control over the business you put in the program?

A. No, he didn't.

Mr. McElroy: That is all.

Cross-examination.

By Mr. Vasiliades:

Q. How many agents did you have selling life insurance in 1956?

A. It would be approximately 800 in the total company.

Q. Approximately 800?

A. Yes.

Q. How many of those 800 attended this convention?

A. I believe it was approximately 125; according to this it was 102.

Q. About one-eighth?

The Court: Do you have agencies in all these cities where you hold meetings?

The Witness: Not always; no.

The Court: For instance, in Mexico; did you have one there?

The Witness: No.

[fol. 65] The Court: Or Havana?

The Witness: No.

By Mr. Vasiliades:

Q. You held a convention in Canada?

A. Yes.

Q. Do you sell insurance there?

A. No.

Q. In this job which you hold—you are vice president in charge of agencies, is that correct?

A. Yes.

Q. And as vice president in charge of agencies you

are familiar with all the company policies, as far as hiring and firing goes?

A. Yes, hiring and firing agents, yes.

Q. How about promotion of agents to executive positions?

A. If the promotion is within the agency division I am familiar with it, yes.

Q. But you are not familiar with the promotion to executive positions within the company?

A. No, not around what might be called executive positions in the agency or sales division.

Q. What would be the next step up for Mr. Rudolph as a promotion?

A. Due to the nature of the business it would be hard to say; any change in title would be a promotion for him, due to the nature of his present position.

Q. Would it have to be in an executive capacity?

A. That in itself would not necessarily be a promotion. There are other officers in the insurance company that do have titles, but as to the potential for income and [fol. 66] such as that, I couldn't say that they would necessarily be greater.

Q. Are agents considered potential executives?

A. Yes.

Q. Then do you, when you are surveying your agents, you look at each one of them and say, "Will he or will he not make a good executive?"

A. There are some occasions when I make that survey and decision, yes.

Q. And you have to be familiar with the performance of the agents in order to do this, do you not?

A. Yes.

Q. And you maintain, you or someone in the company, maintain records of the amount of insurance sold by each agent?

A. Yes.

Q. And that would play some part in determining whether or not he would qualify for a promotion or an increase in salary or executive position, would it not?

A. Yes, it would.

Q. And his conduct in the community in which he lives would be important also, would it not?

A. Yes, sir, very important.

Q. And you have to follow that in order to know what his conduct has been—in other words, you are interested to the degree that you maintain some tabs on that?

A. We are interested, of course, it may be difficult to determine, but we are interested in his conduct and reputation in his community.

Q. Most of the executives are here in Dallas?

A. Yes.

Q. And you, yourself, are here in Dallas?

A. Yes.

[fol. 67] Q. Now, did anyone call the roll, or count the noses at these meetings in New York?

A. No, other than to check who checked in the hotel.

Q. Does Mrs. Rudolph's name have a black mark beside it because she didn't go to the ladies' luncheon?

A. No.

Q. So far as you are concerned the Rudolphs stand just as high in your opinion as they did prior to their failure to go to this ladies' luncheon?

A. Yes.

The Court: I believe I might suggest to each of you that my view of the case is that if I allow the claim it will not be contingent on Mrs. Rudolph's going or not going. I am not going to split it up. Sometimes a Court might be inclined to split a case in the nature of a compromise, but I don't think this is a case of that type.

By Mr. Vasiliades:

Q. Tell me once more why New York City was chosen to hold this convention.

A. It was one of several cities that we were considering or had considered. There are a rather limited number of cities that we can hold our convention in that will meet the criteria we have. One of them is the hotel facilities and the housing in one group in one hotel, and that such hotel facilities be available at the approximate time we desire to have them, according to our schedule

Also, we select a place where the transportation is convenient for us, and also for any guest speakers we might [fol. 68] desire to have, and we select from a somewhat limited number of cities in the United States. We select some of those cities that are proven to be the more popular convention cities, or information from the convention bureau and our knowledge of conventions that have been held there, and New York City is certainly one such place, and for this convention meeting we decided on New York City as the locale for it.

The Court: We will now recess Court until 1:30.

(Whereupon, Court was recessed until 1:30 p.m. of the same day, at which time the following proceedings were had):

(Afternoon Session.)

Kenneth B. Skinner, produced as a witness on behalf of the plaintiff herein, having been previously sworn, resumed the stand and testified as follows:

Cross examination (Resumed).

By Mr. Vaseliades:

Q. Mr. Skinner, other than the convention in New York City, what other agents' conferences do you hold during the year?

A. We usually have several other meetings. We have a series of schools conducted in the home office that new agents under contract to the company attend. Each agency of the company holds one or two, sometimes three meet- [fol. 69] ings during the year of short duration for salesmen in that area. Occasionally, depending upon the need for it, we might have a conference out in the field between one or two agencies conducted by someone from the home office, or participated in by home office men.

Q. Are these fairly expensive to the company?

A. These that I mentioned, the latter—these local meetings?

Q. Yes.

A. No, we do not consider them very expensive.

Q. Who qualifies to attend those meetings?

A. Well, it would depend upon the nature of the meeting as to who we would tell to come into the meetings.

Some of the meetings might be on advanced phases of underwriting, possibly dealing with taxes and trusts, where we invite only those men showing aptitude for working in that type of endeavor; and some others might be on more elementary phases of the business where we have men fairly new in the business rather than having our older more experienced men in there which may be repetition for them.

Q. How do you evaluate the value of these meetings as compared with the meeting in New York City?

A. These local meetings are a necessary part of our activity, but in no way take the place of our general convention meeting.

Q. I realize there is not the entertainment and sightseeing and so on at these local meetings, but we are talking about educational value.

A. They have a definite educational value. They would not substitute for the general meeting, nor would the general meeting substitute for the specialized meetings.

[fol. 70] Q. Can you give us an approximate total of the cost of the convention in New York City?

A. Probably a rough estimate, I would assume in the neighborhood of 83 to $84,000.

The Court: $83,000?

The Witness: In that neighborhood.

Mr. Vasiliades: Can you give us an approximation of the amount expended on all other conferences for the agents?

A. No, I am afraid I could not give an approximation without doing some research in the books and records because of the nature of the accounting. It is not as easily identifiable.

Q. Did all of the individuals who qualified for the convention of 1956 attend?

A. To the best of my recollection all but about 10 or 15, in that neighborhood— 10 or 12. I have that record with me if you allow me to refer to it.

Q. These 10 or 12, did they obtain excuses from you for not attending?

A. Each of them, at the time, explained to me—I was aware at the time of the reason they were not attending.

Q. Are they blacklisted now as far as advancement goes?

A. I would not say they are necessarily blacklisted, as I recall—not recalling the reasons they did not attend—I recall they each had a valid reason for not attending.

[fol. 71] Mr. Vasiliades: No further questions.

Redirect examination.

By Mr. McElroy:

Q. Mr. Skinner, with regard to the basis of qualification of these various agents, I believe you previously testified there were possibly 800 agents, I want to ask you whether or not that 800 were ordinary life agents, or what kind of agents?

A. The figure of 800 was an approximate number of the total agents or salesmen representing Southland Life Company. Our agency division or sales force is divided into two separate organizations whose work are quite significantly different from each other.

The convention we had in New York with approximately 102 agents who attended were from our ordinary division, in which there are approximately—at that time, 300 agents that were eligible to be considered to attend this meeting of which about 102, or whatever it was, attended.

Q. So, one out of three of those eligible were ordinary life agents who attended?

A. That is correct. I might add, of the 102, while representing about one-third of the number of agents available, they produced or accounted for approximately three-fourths of the business written by the ordinary division.

Q. In addition to those who had the minimum business on the books to qualify to go, did you also have agents qualify on a pro rata basis?

A. Yes; men not with us for a long period of time. Some of those attended that produced $100,000 or less than $100,000, but we thought there was promise—they were men

[fol. 72] with a promising future and we wanted them to attend.

Q. When you allowed them to qualify to go and they became eligible to go to the convention, you were not giving them any prize or award because they had not done anything at that time?

A. That is true.

Q. Actually, they were able to attend with less production on the books than others that have been with the company?

A. Correct.

Q. Will you tell us whether you were choosing men on the basis of aptitude for the business?

A. Yes, we select the men to attend a convention based upon their proven abilities as well as men showing an aptitude for the business. The amount of business they have written in the past is an important yardstick in our judgment of measuring whether or not they are doing a good job and will continue to do one.

Q. In view of that picture, will you allow various agents in the company to attend who have minimal production records behind them? How would you characterize what this convention means to those men? What would it represent to the agents who have not—

Mr. Vaseliades: Your Honor, I object again. We are asking this witness once more to testify as to what a third party felt something was. We had the same situation with the wife; now we are asking him to testify what agents thought something was.

[fol. 73] The Court: I will let him testify how it affected his mind and how it apparently affected the agents. There is no jury here.

Mr. McElroy: Thank you, Your Honor. Go ahead, please.

The Witness: I looked upon it as a duty and responsibility to attend the convention of the agents as it is your duty and responsibility to cooperate and enter into any planned program the company plans for the benefit of the company and policy holders.

Q. In your opinion, the convention and related program and other events, while not income or—

The Court: I do not believe his opinion is admissible.
Mr. McElroy: All right, Your Honor.

Q. Let me ask you this; if you will tell us, please; why you regard it as important, if you do, to have these conventions away from Dallas?

A. In addition to the reasons I mentioned earlier about hotel facilities being adequate, transportation being convenient and the availability of speakers outside of the company, in addition to that, it is considered by us important that the convention be held at a location away from the agencies and home office—the officials' place of business—so they are not spending their time attending to business [fol. 74] instead of convention business; that they will be away from outside distractions of their own business and responsibilities such as that.

Q. This final question: If, considering the convention as a whole, you had to give up the formal parts of it relating to the business program, or the informal parts where you have provided occasions for every man to meet and talk occasionally about their own problems and ideas, which would you give up?

A. I think they are both important but I believe the most important is the opportunity for an informal visit and exchange of ideas that take place at times other than the formal business program—the opportunity to become better acquainted with fellow agents in other parts of the nation and have a discussion of individual problems. I think that is as important or more important than what they receive in the way of formal speeches from the platform.

Mr. McElroy: That is all we have.

Recross examination.

By Mr. Vaseliades:

Q. Why was the 1959 convention held in Dallas?

A. Because in connection with the opening of the home office building, we wanted the sales force to have an opportunity of becoming acquainted with the building.

Q. How about the people who joined your sales force

after 1959, wouldn't it be appropriate to hold a convention in Dallas every year?

[fol. 75] A. We do not consider it so. Those that join the company after 1959, will, on some occasion, will be coming to the home office of a school or a small specialized conference.

Q. In other words, they can get everything you want them to get in Dallas if you choose to give it to them there, can they not?

A. No, sir, I do not think so.

Q. They have to run off to the Waldorf Astoria in New York to get it?

Q. Not necessarily New York City.

Q. But it is impossible to get it in Dallas?

A. We think we can accomplish much more held in a location—most conventions are held in a location other than Dallas. We think we can accomplish much more and get a better job of getting our messages over to the agents and messages back from them away from their place of business.

Q. These agents who have been with the company for a short time and qualify by selling less than other agents, the appropriation was the same, was it not, Mr. Skinner?

A. The rate of production for the period of time they had been here—or were producing at the same rate as were the others production per month, or something like that, if that is what you refer to?

Q. Yes.

A. Yes, it is the same or similar; I don't recall if it is the same.

Mr. Vaseliades: No further questions.

Mr. McElroy: No further questions.

[fol. 76] The Court: You may be excused.

(Witness excused.)

J. Harry Wood, produced as a witness on behalf of the plaintiff herein, having been first duly sworn, testified as follows:

Direct examination.

By Mr. McElroy:

Q. Will you state your name?
A. J. Harry Wood.
Q. Where do you live?
A. Hartford, Connecticut.
Q. Where were you born?
A. I was born in Arkansas.
Q. How long did you live there?
A. Until I finished college.
Q. Where did you go to college?
A. Harvard.
Q. Did you take an M.A. degree somewhere?
A. Columbia.
Q. Then, did you go to work for a life insurance company?
A. I went to work in between that.
Q. Which one?
A. John Hancock of Boston.
Q. Did you have various positions with that company?
A. Yes, sir.
Q. When did you first become interested in life insurance agency management?
[fol. 77] A. You mean the organization or the job of management?
Q. The job of management.
A. In 1930.
Q. Will you tell us of your connection, please, with the Life Insurance Agency Management Association—when it began and your present position?
A. Two years ago.
Q. What is your position?
A. Managing Director.
Q. What does your agency seek to do?
A. We have four functions: Research, Management Consultation, Education and Training, and Publications. We have 125 people, half of them doing research.
Q. Before continuing, I want to ask you if you also worked for the Paul Revere Insurance Company.

A. Yes.

Q. What was your capacity?

A. Executive Vice President, operating head.

Q. When was hat?

A. '44, '49.

Q. Have you also worked for and had a position of executive responsibility for the Central Standard Life Insurance Company?

A. Yes, sir, President.

Q. Where was that located?

A. Chicago, Illinois.

Q. Have you been a professor in the insurance field?

A. Not in the insurance field.

Q. In the management field?

A. Yes.

Q. Where was that?

A. Washington University, St. Louis.

Q. When was that?

[fol. 78] A. '51 to '55.

Q. Have you also served as editor of C.L.U. Journal?

A. Yes.

Q. What is the C.L.U. Journal?

A. It is the one professional publication in the life insurance business.

Q. With regard to your present duties, may I ask you whether or not annual meetings, or regular meetings of perhaps every 18 months or some similar period of time, are such meetings as those of a common and frequent occurrence within the life insurance industry, generally?

A. I could say practically universal. There may be exceptions, if there are, I am not aware of them, and have been going on for many, many years.

I noticed a publication that we put out in the first two years of our organization's history, which would be in '24, on conventions, covering the necessity why they were held and so on. So, even at that time, they were important enough and traditional enough and a part of the business enough to warrant one of the early reports—I should say publications about the business.

Q. Is it traditional in the life insurance agency to hold this type of convention as part of the agency development program of the company?

A. Yes; too. I say it is more than that but companies usually think of holding them to educate—but I mean education in a little bit different way than normal, to motivate, to build loyalty; but to my mind, one of the chief reasons for a general convention is to rekindle and reeducate the man to the life insurance business because this is sort of a lonely business in the sense you probably get more turn-downs to [fol. 79] sales than in many others, and so, when agents meet other successful agents from over the country and find out they have the same problems, I think much is accomplished by that meeting.

Q. Is anything accomplished toward acquiring and maintaining loyalty to the company at the convention?

A. Yes, it is, but the loyalty comes about from two or three ways. First you form a loyalty by learning and knowing the company is strong and the company is strong in part by reaction toward management; and, secondly, because your loyalty to any organization is partly loyalty to individuals and as you get to meet individuals of that company from all over the country, that builds a friendship which in turn makes for loyalty.

Mr. Vaseliades: Your Honor, might I inquire of the witness if he was present at this 1956 convention held by Southland?

The Witness: I was not, sir.

Mr. Vaseliades: We will have to object to all this testimony as being irrelevant to our particular case, as everyone knows each convention is different.

The Court: I think, counsel, he might be permitted to tell the general purpose of the company in holding these conventions, but I don't think he is naturally qualified to tell what happened at this convention.

[fol. 80] Mr. Vaseliades: May I ask him then if he is aware of the purpose for which Southland held this convention.

The Witness: I have heard this morning and would know why any and all companies do hold them. I think I could tell you that about any company that you would name—their purpose, if I never heard of it.

Mr. Vaseliades: This is your conjecture.

The Witness: Well, based on 33 years of study and observation and full time work in management and consultation in the insurance business today and trying to save them money.

Mr. McElroy: As an expert in this field, I believe you qualified yourself as an expert, tell us whether or not these conventions in the industry generally are held for legitimate business purposes of the company holding them.

Mr. Vasiliades: I object for the same reason. Each convention is different. How can this witness say a convention is held for a certain purpose without having been there?

The Court: I believe, counsel, it might be well to let him state the advantages that accrue to the company by reason [fol. 81] of the holding of them and leave the conclusion to the Court.

Mr. McElroy: Thank you.

Mr. Vasiliades: One further reason for my objection is, as I stated before, we are not challenging the bona fides of this production to the insurance company; that is not an issue and any evidence on that matter is irrelevant to our issue. That is all he has given us here today.

Mr. McElroy: Please go ahead.

The Witness: You may be correct, sir.

Mr. McElroy: Do not direct yourself to counsel; just His Honor. Tell His Honor the advantages to the company for holding conventions of this type.

A. There are many; for instance, one reason is for the purpose of education. By "purpose of education" I don't mean that which they naturally can read in a magazine because reading is not enough. One of the things, the companies attempt to educate their field force toward the right kind of business and why that business would remain in force long after it gains monetarily—they are discussing that. They are also discussing such things as trying to keep up with the interests of the agents, and the company and the public generally. That is what I call the field of education.

[fol. 82] The Court: Breaking down the thought, what are the elements? What are the things that would be of educa-

tional value to be received from a meeting held at a distance over and above a meeting held, let us say, at home?

A. I agree completely and practice this as an operating executive so I am not just talking now and I say that you must get your people occasionally away from their headquarters for two reasons. One reason that has been given just previously, that if they are at their headquarters, like the home office, they are going to spend time on things other than what the company is trying to get over at the general meeting. The real reason for taking it some place else, furthermore, I mean, you have got to have some place which is a central location, if it is going to be some other location. Then you get them all there and you have a cross fertilization of ideas, not only between agents in Dallas and Houston, but agents in Dallas, Arkansas and wherever they may be—it is that cross fertilization of ideas and sometimes the farther away you are, the more the impression.

The Court: Take a small place with hotel facilities; take Mineral Wells, Texas; would there be anything to detract from your having conventions there?

A. If I lived in New York or Chicago, I think I would like to go to Texas, but, I am not in Chicago, I am in Texas. However, this train trip means the people are thrown together from the standpoint of building loyalty and there is where you exchange so many of your business ideas. I think to a certain extent distance in itself is an added advantage.

[fol. 83] The Court: Will this case serve as a class suit? In other words, will other men who attended this convention have suits of this character?

A. That is one thing I am wondering about. One reason I am glad to be here is because this will—if this kind of suit was decided against the plaintiff, it could change the whole operation of the insurance business. This is not just a suit, as I see it, of one case. Here is a type of sale procedure, sales management which has been a part of the business for a number of years; certainly for more than 35 or 40

years, in which motivation, stimulation and training all revolves, and so every company in the country, if they knew about this, and every agent in the country would be tremendously interested. It goes far beyond and that is why I am interested because it is really hitting at the established roots of agency management.

The Court: Of course, there are a number of suits the same nature of this one that adds to the importance of what we are about to do.

The Witness: Right, sir.

Mr. McElroy: Can you tell us this, Mr. Wood, based on your experience over the years in the life insurance industry generally, whether or not the purpose of these conventions in promoting and motivating the skills and attitudes of the agents is any way detracted from by having sightseeing tours and entertainment in conjunction with the convention?

[fol. 84] A. No, sir. I attended a convention recently and if they had not had a tour in the afternoon, I would have been ready to jump out of the window. I think you know that salesmen are out walking and you can't keep the salesmen in their chairs all the time.

Q. Have you found the presence of an agent's wife at a convention does serve or does not serve bona fide business purposes?

A. I think it serves bona fide business purposes for a lot of reasons. I thought about this bona fide business purpose last night. For one thing, in the life insurance business an agent's wife comes as close as being a partner as in any other kind of business. I know one thing and that is it is encouraging for the agent's wife to help in prospecting and help the agent and so help build morale of the agent and they learn about this at the convention. Another thing they learn—there are some wives who wonder why their husbands don't come home to dinner or are out late at night and they come to the convention and find out that all agents practically have that problem. All the agents' wives have the problem of dinner getting cold, social engagements being broken and it gives them the understand-

ing and conviction that this company is for their husband and that builds something.

Furthermore, agents' incomes fluctuate; they make a good sale and then don't make any and the wife is given the background and knowledge to understand that—given the background to understand the importance of budgeting.

It tends to give them a feeling of security—a feeling that their husband is in a secure career, where otherwise they may have wondered about that because he is on commission and may be working out of his home. Previously, he may [fol. 85] have been working for a bank or other firm as a salaried employee, and it seems to me they are motivated to learn more about the business.

Most conventions I know anything about, the wives attend the business sessions and they listen and so that can't help but have a bona fide business purpose; and this may be an individual thought, but it seems to me conventions serve another bona fide purpose as far as wives are concerned, and it is this; they begin to see other agents send their children to college; other agents own their homes and have those things and it gives them a lift toward wanting more of the things others have and thus encourages them to believe their husband is in a business where he can give it to them.

Mr. McElroy: Thank you; we have no further questions.

Cross examination.

By Mr. Vaseliades:

Q. You said you are an employee of the Life Insurance Management Association; what is that?

A. The Life Insurance Management Association is a nonprofit organization doing research and management consultation work.

Q. Are the headquarters in Washington?

A. Hartford, Connecticut.

Q. Where is your office?

A. Hartford, Connecticut.

Q. Is this management association paying for your expenses to come down and testify here?

A. They are not.

Q. Who is?

[fol. 86] A. As a matter of fact, I happened to be in Denver and when I was asked to come, I said I would but would like to have my extra expenses paid by the people who asked me to come and there was no disagreement.

Q. Who is paying your expenses?

A. Southland Life.

Q. Thank you. You say the reason for holding this convention away from the home office is to have everybody together where you can watch them and observe them—is that part of it?

A. No, the reason to have it away from the home office was they would not during the day be running into their offices to attend to business they could handle by mail. To keep them together for the purpose for which we had them, which is partly for business meetings, but a great deal for their cross fertilization with one another from other parts of the country.

Q. Wouldn't it be better to hold this convention in a secluded spot where they could not conduct their business?

A. Some are held at secluded spots.

Q. You would not consider New York City or Mexico City a secluded spot?

A. I would consider it a spot away from the home office.

Q. But there are numerous distractions in those cities.

A. Let's say there are numerous entertainments as there are in secluded spots.

Q. What do the agents get out of this trip?

A. Well, I think they get a tremendous amount. For instance, this is one business in which I am now speaking from experience.

[fol. 87] Q. That is why I asked.

A. This is one business where you are drained dry from your own work by turndowns in comparison with number of sales and so, going to this kind of general meeting among other successful people and finding out they have had exactly the same problems and that they have felt frustrated and lost gives you renewed courage.

Q. These are all the same people you can meet at regional meetings?

A. No, sir.

Q. Why not?

A. Because you only had a portion of your company. If you went one time to one regional and another time to another regional, that might in time be so, but that is not the way it is done.

Q. The agent receives a free trip to New York City, also; you did not mention that.

A. I would hope his expenses would be paid because he is on commission and loses earnings through that.

Q. Even in a nightclub—the Copacabana?

A. I would say that would be as good a place.

Q. To discuss insurance business?

A. Oh, no, but I understood this was dinner time and after.

Q. But during the luncheons you dispose of the business—not at night?

A. As a matter of fact, I just came from a convention and after dinner, they were talking business part of the time at every table.

Mr. Vaseliades: No further questions.

[fol. 88] Mr. McElroy: No further questions. May this witness be excused?

The Court: He may go.

(Witness excused.)

JOHN L. BRIGGS, produced as a witness on behalf of the plaintiff herein, having been first duly sworn, testified as follows:

Direct examination.

By Mr. McElroy:

Q. State your name.

A. John L. Briggs.

Q. Where do you live?

A. 4577 Bordeaux, Dallas.

Q. How long have you lived in Dallas, approximately?

A. Forty years.

Q. By whom are you employed?

A. Southland Life Insurance Company.

Q. How long have you been so employed?

A. It will soon be thirty-four years.

Q. What is your position with Southland?

A. Vice President and Director of Public Relations.

Q. In connection with the discharge of your duties as Vice President and Director of Public Relations for Southland, did you have occasion to work on some of the details of the 1956 convention in New York City?

A. I did.

[fol. 89] Q. Did you have to make a determination of your own as to the reasonableness of the various monies that Southland was paying out in connection with the convention?

A. I did.

Q. For example, did you check the reasonableness of transportation to New York City by railroad?

A. Yes.

Q. Explain that to us briefly.

Mr. Vasiliades: None of this has any issue, Your Honor. The price of this trip has even been stipulated to. I see no need to once again go over this material.

The Court: Try to avoid anything in the record undisputed.

Mr. McElroy: All right, Your Honor.

Q. With respect to the dinner at the Copacabana, did you make a determination of prices of other eating places in New York City where a crowd of this size might have dinner?

A. I did.

Q. Did you determine where you decided to have it, would cost more or less, than having it at any other place?

A. It certainly was not as much as many places. It was a very reasonable average figure in my opinion.

Q. For a hotel with convention facilities that the Waldorf had, did you find by comparison with other hotels that their rates were reasonable or not reasonable?

[fol. 90] A. They were reasonable.

Q. With respect to the various tours and other items

for this convention program, did you undertake to do this in the most reasonable and expedient way you could?

A. Yes, sir.

Q. Taking the agent's position whereby the selling of life insurance is to him a business, tell us from your experience with Southland Life whether or not attending a convention would be considered part of an agent's duty to his company?

Mr. Vasiliades: Your Honor, I would like to hear once a question that could be answered without yes or no. I can't recall a single one so far.

The Court: He is running this case.

Mr. McElroy: Mr. Briggs, if you will, tell us whether or not attending conventions would normally be part of an agent's duty to his company?

A. I believe that it would; yes, sir.

Q. Was there anything about the tours and the entertainment that you, yourself, planned and observed in New York City that would or did detract from the purpose of the meeting and promoting professional skills and morals of those agents?

A. No, sir.

Mr. McElroy: That is all we have, Your Honor.

[fol. 91] Mr. Vasiliades: No questions.

(Witness excused.)

Mr. McElroy: Plaintiff rests, Your Honor.

And, Thereupon, the defendant, to maintain the issues on its part, introduced the following evidence, to-wit:

Mr. Vasiliades: I want to call Mrs. Rudolph.

The Court: Counsel for each side should bear in mind what we have said here. It will be unnecessary to go into any special phase of the case that would bear on the benefits that she received. I think it might be shown that her presence made her husband a better delegate, or whatever it is; that is a matter of opinion.

Mr. McElroy: May we state to the Court, Mrs. Rudolph has been very nervous for some time because of trouble she has in her ear and her health has not been excellent.

The Court: I think we should take cognizance of that and not be rigid on cross examination, as it were.

[fol. 92] Mrs. C. J. D. Rudolph, produced as a witness on behalf of the defendant herein, having been first duly sworn, testified as follows:

By Mr. Vaseliades:

Q. Mrs. Rudolph, you are a housewife, I believe, is that correct?

A. That's right.

Q. That takes up a considerable amount of your time?

A. That's right.

Q. You engage in church and civic activities?

A. I do.

Q. That requires a considerable amount of time?

A. Yes.

Q. Do you have any grandchildren?

A. Yes.

Q. How many?

A. One.

Q. You have always been interested in your husband's work, have you not?

A. Yes.

Q. There is nothing that you do for your husband that you would not do anyway as a dutiful wife, is that correct?

A. That's right.

Q. Independent of whether or not you went to a convention, you felt it was your duty as a dutiful wife, you would perform or attend any function he asked you to?

A. Yes.

Mr. Vaseliades: I have no further questions.

[fol. 93] Mr. McElroy: Did you find that your attendance at these conventions has enabled you better to work with your husband in the performance of his duties?

A. Definitely.

Mr. Vaseliades: Just one more question. Do you recall approximately how many conventions you had attended before the 1956 convention?

A. Well, I have attended all except two because my husband has been with the company—I can't recall how many.

Mr. Vasiliades: Will you tell me what you learned in the 1956 convention that you did not already know?

A. Not right now I couldn't; I would have to think.

Mr. Vasiliades: No further questions.
Mr. McElroy: Thank you; that is all, Your Honor.

(Witness excused.)

Mr. Vasiliades: Defense rests, Your Honor.

Defendant Rests.

Mr. McElroy: Plaintiff closes, Your Honor.

[fol. 94]

In United States District Court

Note Re Argument

The Court: Gentlemen, I would like each of you to give a little summary of the evidence as you understand it and then your deductions or your conclusions as to why plaintiff should or should not recover.

Whereupon Mr. McElroy presented his argument after which Mr. Vasiliades presented his argument.

Which was all of the evidence offered or received and arguments of counsel on the trial of this case.

In United States District Court

Oral Memorandum of Court

The Court: Gentlemen, you have an interesting question here, although as far as this case is concerned, it is only a small sum.

There are certain well settled propositions of law we might gather our thoughts and reasons from. One is that a bonus paid to an employe is part of his income, just like a tip paid to a waitress is part of her income. So much for that.

It is likewise a well settled proposition of law that an employer may assemble his employes for the purpose of training and instructing them, and the expenses that he goes to or to reimburse them for the expense they went to in coming to the meeting is a legitimate expense of the company, and no gain to the employe in a monetary way.

Now the reasoning from these two propositions—let us see what is true here.

The Alabama case was for attending a convention at Fort Monroe in Virginia. It does not appear where the office of the company is—the insurance company—it does not appear where the territory of the company is. So far as the information is concerned, much of its business might be [fol. 95] around and about Fort Monroe. Therefore, selection of that place would be in line with ordinary business economy.

We will assume that the company here has a larger part of its business in Texas and adjoining states. Primarily, the place of the home office would be the place where the agents would be called to as a business proposition to receive instructions and to be taught.

Suppose there was a lot of business down and around San Antonio. To break the monotony to a degree, the convention might be held in San Antonio, or in Houston, or might be held in Oklahoma City. But what business reason is there for holding a convention in a place as far away as New York; and certainly, what business reason is there for holding a convention in Havana, Cuba. I am sure you did not write Fidel Castro for permission. It was not held down there for educational purposes, nor was the trip to the City of Mexico for educational purposes in insurance.

Assume that it was to a degree; what was the primary purpose of the trip? It was a reward, or a bonus given to the employes for excellence in service. If it was purely educational, it might be held here in Dallas and those who did not attain such a high rating might have the benefit of the program at the convention.

All of the evidence considered, we think it irrefutably leads to this conclusion: That the insurance company was just doing a gracious, magnanimous thing of giving those leading agents a trip just as much as if it had given them

an automobile, or suit of clothes—the trip to New York, but the trip to New York cost them $80,000.

The Court's conclusion is that the holding of these conventions and especially the holding of them at remote places, [fol. 96] that the primary purpose was that of affording a pleasure trip which the agent himself, to have enjoyed, would have paid out of his own funds if the company had not given it to him, which is in every way in the nature of a reward that would be a bonus.

Suppose they had offered it to a man in this manner: At the first of a given period, let's say the first of the year, to all those that write over $100,000 insurance, let's say, we will either give you a free trip to Paris, France, or we will give you a bonus of $500. You can exercise your choice; either one would have been a bonus. The trip would have been a bonus. The primary purpose of it was not to educate insurance men in Paris; the primary purpose of it was to hold out an alluring reward to make them work harder. It was part of their service.

We will award judgment to the defendant in the case.

IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT—Filed September 21, 1960

This is an action by the plaintiffs to recover $126.90 in income taxes and $10.19 of interest, together with interest on such sum. Plaintiffs were assessed and paid such amount and bring this suit to recover the payment so made.

The deficiency in such amount was assessed on the theory that the $560.00 admitted value of an all expense paid trip from Dallas, Texas to New York City, taken by the plain- [fol. 97] tiffs, husband and wife, in 1956, and paid for by the Southland Life Insurance Company, was includible in the income of the plaintiffs, and as a personal expense was not deductible by them as an ordinary and necessary business expense. Plaintiffs contend that the value of such trip was not income to them, and even if it were, that they are entitled to deduct its value as an ordinary and necessary business expense. Plaintiff, C. J. D. Rudolph is an insurance agent selling for Southland. He qualified to attend South-

land's convention in New York City and also to take his wife along by virtue of selling the requisite amount of insurance as determined by Southland. The convention trip consumed five or six days. Of this time, one morning session was devoted to a business meeting, followed by a business luncheon. The remaining time was devoted to travel, sightseeing, entertainment, fellowship or free time.

There are certain well settled propositions of law we might gather our thoughts and reasons from. One is that a bonus paid to an employee is part of his income, just like a tip paid to a waitress is part of her income.

It is likewise a well settled proposition of law that an employer may assemble his employees for the purpose of training and instructing them, and the expenses that he goes to or to reimburse them for the expense they went to in coming to the meeting is a legitimate expense of the company, and no gain to the employee in a monetary way.

Now the reasoning from these two propositions—let us see what is true here.

The recent Alabama case, Thomas v. Patterson, a November 1959 decision of the United States District Court for the Northern District of Alabama, was for attending a [fol. 98] convention at Fort Monroe in Virginia. It does not appear where the office of the company is—the insurance company—it does not appear where the territory of the company is. So far as the information is concerned, much of its business might be around and about Fort Monroe. Therefore, selection of that place would be in line with ordinary business economy. In any event, we are concerned with whether plaintiffs in this case must include the value of the trip in their income and if so, whether or not they are entitled to a business expense deduction. We are not concerned with the deductibility of the convention's cost by the insurance company. It is the purpose of the convention to the taxpayers which governs our action, not the purpose of the insurance company in holding them.

We will assume that the company here has a larger part of its business in Texas and adjoining states. Primarily, the place of the home office would be the place where the

agents would be called to as a business proposition to receive instructions and to be taught.

Suppose there was a lot of business down and around San Antonio. To break the monotony to a degree, the convention might be held in San Antonio, or in Houston, or might be held in Oklahoma City. But what business reason is there for holding a convention in a place as far away as New York; and certainly, what business reason is there for holding a convention in Havana, Cuba. It was not held down there for educational purposes in insurance.

Assume that it was to a degree; what was the primary purpose of the trip? It was a reward, or a bonus given to the employees for excellence in service. If it was purely [fol. 99] educational, it might be held here in Dallas and those who did not attain such a high rating might have the benefit of the program at the convention.

All of the evidence considered, we think it irrefutably leads to this conclusion: That the insurance company was just doing a gracious, magnanimous thing of awarding those leading agents a trip just as much as if it had awarded them an automobile, or suit of clothes, similarly the plaintiff and the other leading agents of Southland were awarded this trip to New York, and the trip to New York cost Southland $80,000.

The Court's conclusion is that the holding of these conventions generally, and especially the holding of them at remote places, have the primary purpose of affording a pleasure trip which the agent himself, to enjoy, would have paid out of his own funds if the company had not given it to him, which is in every way in the nature of a reward that would be a bonus.

Suppose they had offered it to a man in this manner: At the first of a given period, let's say the first of the year, to all those that write over $100,000 insurance, let's say, we will either give you a free trip to Paris, France, or we will give you a bonus of $500. You can exercise your choice; either one would have been a bonus. The trip would have been a bonus. The primary purpose of it was not to educate insurance men in Paris; the primary purpose of it was to hold out an alluring reward to make them work harder. It was part of their service.

Therefore, we conclude, that the trip was earned by the plaintiff, C. J. D. Rudolph, and was in the nature of a bonus, reward, and compensation for a job well done. As compensation, the $560.00 value of the trip of the husband [fol. 100] and wife was properly included in the income of plaintiffs for the year 1956.

Further, since the trip was primarily a pleasure trip in the nature of a vacation, its cost is personal to the husband and wife and therefore not deductible by them.

Recovery for the plaintiffs will be denied for the reasons above stated.

T. Whitfield Davidson, United States District Judge.

In the United States District Court

For the Northern District of Texas,

Dallas Division

Civil No. 8317

C. J. D. Rudolph and Irma M. Rudolph, Plaintiffs,

vs.

United States of America, Defendant.

Judgment—Filed September 29, 1960

The above entitled case came on for trial by the Court without the intervention of a jury. The Court, having heard the evidence and arguments of counsel, rendered its opinion in accordance with Rule 52(a) of the Federal Rules of Civil Procedure.

In conformity therewith, it is hereby

Ordered, Adjudged, and Decreed that the plaintiffs' complaint be and is hereby dismissed with prejudice and with costs taxed to the plaintiffs.

[fol. 101] Done, this 28 day of September, 1960.

T. Whitfield Davidson, United States District Judge.

Approved as to Form:

B. T. McElroy, Attorney for Plaintiffs, W. E. Smith, Attorney for Defendant.

In the United States District Court

For the Northern District of Texas,

Dallas Division

Civil No. 8317

C. J. D. Rudolph and Irma M. Rudolph, Plaintiffs,

vs.

United States of America, Defendant.

Notice of Appeal—Filed November 15, 1960

C. J. D. Rudolph and Irma M. Rudolph, husband and wife, Plaintiffs herein, proceeding under Rule 73 of the Federal Rules of Civil Procedure, hereby file their Notice of Appeal, taking their appeal from the Judgment rendered herein on the 29th day of September, 1960, to the United States Court of Appeals for the Fifth Judicial District sitting at New Orleans, Louisiana.

Turner, White, Atwood, McLane and Francis, By [fol. 102] B. T. McElroy, Attorneys for C. J. D. Rudolph and Irma M. Rudolph, 1900 Mercantile Dallas Building, Dallas 1, Texas.

Cost Bond;

Statement of Points;

Order to Forward Exhibits in their Original Form, or Photostatic copies to U.S.C.A., for Inspection by such Court;

Appellant's Designation of Exhibits to be sent in their Original Form;

Appellant's Designation of Contents of Record on Appeal;

Appellee's Designation of Contents of Record on Appeal;

Omitted from the Printed Record pursuant to Designation as to Printing Record heretofore copied at page 1.

* * * * * * *

[fol. 103] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 104]

PLAINTIFFS' EXHIBIT 10

Company-Arranged:

December 11—Two convention special trains leave Dallas at 9:30 p.m.

December 13—Sightseeing Trip to Waldorf-Astoria.

Arrive Jersey City, N. J., at approximately 3:00 p.m. and board the special buses parked alongside the trains. Buses cross lower New York Bay via ferry boat, affording an excellent view of the Statue of Liberty, the New York skyline and other landmarks. Arrive at the hotel's 49th Street entrance about 4:00 p.m.

December 14—Business Session.

9:30 a.m. to 12:00 noon—Empire Room of the hotel. See page 23 for detailed program.

*Group Luncheon.

12:30 p.m. in the hotel's Sert Room (so named in honor of the famous artist who painted the murals in the room).

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* Coupons furnished for these events must be surrendered when called for.

*Sightseeing Tour.

2:30 p.m. sightseeing buses leave the 49th Street entrance. The buses pass Rockefeller Center; skirt Central Park for its full 2-1/2-mile length; penetrate into Uptown Manhattan as far north as Grant's Tomb; swing south to pass the Cathedral of St. John the Divine and bisect Central Park; reach Fifth Avenue and travel the renowned [fol. 105] thoroughfare for a distance of 92 blocks through Midtown Manhattan and into Downtown Manhattan past Chinatown, the Bowery, Battery Park, then north again past Brooklyn, Manhattan and Williamsburg Bridges; and follow the East River past the United Nations Headquarters, finally returning to the Waldorf-Astoria about 5:30 p.m.

December 15—*Breakfast and Fashion Show (for Ladies Only).

8:45 a.m. ladies only board buses at the 49th Street entrance for transportation to the breakfast and fashion show scheduled in the Charleston Garden Restaurant at B. Altman & Company on Fifth Avenue. The function will be over by 10:45 a.m. (in time for those who wish to do so to attend the special Christmas show at Radio City Music Hall—1:15 p.m.). The ladies will arrange their own transportation for returning to the hotel or going to whatever spot is next on their agenda.

Convention Events:

Special Christmas Show at Radio City Music Hall.

1:15 p.m. curtain goes up. Actual tickets are needed for this event.

Such tickets are available on Two Occasions Only:—

[fol. 106] (1) Any time up to 6:00 p.m. Thursday, December 13, at Southland Life's special registration desk in the South Lounge; and

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*Coupons furnished for these events must be surrendered when called for.

(2) Between 12:00 noon and 12:30 p.m. Friday, December 14 (prior to the start of the group luncheon), at the Sert Room.

*Evening at Copacabana.

6:30 p.m. buses leave the 49th Street entrance for the Copacabana where there will be dinner, dancing and floor show. Buses for return to the hotel will load at 10:00 p.m. at the Copacabana entrance. Formal dress is Not called for.

Any Date While in New York.

Each convention kit contains coupons for the following activities which may be elected at your convenience:

*Tour of the Empire State Building (about one hour).

*Tour of Rockefeller Center (about one hour).

*National Broadcasting Company Behind the Scenes Tour of radio and television studios in Rockefeller Center (about one hour).

Radio and Television Shows.

Actual tickets are needed for attending live radio and television shows. A limited number of tickets for certain of these radio and television shows has been obtained. Such tickets are available on Two Occasions Only:

[fol. 107] (1) Any time up to 6:00 p.m. Thursday, December 13, at Southland Life's special registration desk in the South Lounge; and

(2) Between 12:00 noon and 12:30 p.m. Friday, December 14 (prior to the start of the group luncheon), at the Sert Room.

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* Coupons furnished for these events must be surrendered when called for.

December 16—Buses leave the 49th Street entrance for return to trains.

10:45 a.m. the first bus leaves; the last departs at 11:45 a.m.

[fol. 108]

PLAINTIFFS' EXHIBIT 11

Business Meeting.

1956 Agency Convention—Waldorf-Astoria Hotel.
New York City, New York.

Presiding—Kenneth B. Skinner, CLU.
Vice President and Agency Director

Friday Morning

December 14

9:30 a.m.—Door Prizes.

Invocation . . . Neil H. Wright, Lubbock, Texas.

"Welcome to New York" . . Ben H. Carpenter, Executive Vice President.

Agents' Panel—Theme: "Success Through Planning."

Herman Ford, CLU, Moderator. Asst. Vice President and Director of Sales Training.

Huff Baines, Austin, Texas.

Sully Woodland, San Antonio, Texas

Jimmie Whitmire, Wichita Falls, Texas.

Johnny Wright, Tyler, Texas.

Recess.

[fol. 109] "The 1957 Agency Activity Program" . . . Glenn M. Brooks, Vice President and Director of A & H Insurance.

"Our Southland Life Future" . . . Dan C. Williams, President.

"Your Company and Mine" . . . John W. Carpenter, Chairman of the Board.

Adjourn.

12:30 p.m.—Luncheon—Sert Room, Waldorf-Astoria Hotel.

Presiding—Field Scovell, Vice President and Superintendent of Ordinary Agencies.

"Success Through Right Thinking" . . . . Dr. Norman Vincent Peale.

PLAINTIFFS' EXHIBIT 12

Dallas, Texas

August 19, 1960

Kenneth B. Skinner
Andy Edmonson

Classification of People Attending the New York Convention in December, 1956

Dear Ken:

The classification breakdown on the 293 Southland people who attended the New York convention in 1956 was as follows:

	MEN	WIVES
Agents	102	97
Salaried Field Assistants	3	3
Assistant Managers	2	2
Managers	17	17
Officers and Home Office Men	27	23
TOTALS	151	+ 142 =293 people

These figures have been confirmed by my final New York convention trip roster.

Sincerely,

/s/ ANDY G. EDMONSON
Agency Secretary

AGE:pw

PLAINTIFFS' EXHIBIT 13

Dallas, Texas

August 18, 1960

Kenneth B. Skinner
Andy Edmonson
New York Convention Expense, 1956

Dear Ken:

Following are the various items of expense in connection with the New York Convention. To determine the [fol. 110] average cost per person, the total expenditure for each item was divided by the number of people covered by such expenditure. The average cost per couple was calculated as two times the average cost per person.

Description of Expense	Average Cost per Person	Average Cost per Couple
Allowance for meals in New York		
3 breakfasts (@ $2.00		
1 lunch $3.00		
2 dinners (@ $5.00	$ 19.00	$ 38.00
Round Trip Train Fare		
Dallas to New York City	119.40	238.80
Pullman Cost	37.13	74.26
Rail Meals	30.54	61.08
Baggage, Porter & Dining car tips	8.23	16.46
Hotel Room at Waldorf	36.33	72.66
Ticket to Radio City Music Hall	2.50	5.00
Sightseeing Bus tour in N. Y. City	2.75	5.50
Dinner at Copacabanna Night Club	9.20	18.40
Transportation to and from Copacabanna	.82	1.64
Luncheon at Waldorf Hotel	6.00	12.00
Totals	$ 271.90	$ 543.80

Sincerely yours,

ANDY G. EDMONSON,
Agency Secretary.

AGE:mp

P. S. Total expense allowance checks	$ 7,686.96
N. Y. meals included in above (19.00 per person)	5,567.00
Congregation expense	$ 2,119.96

Congregation expense, $2,119.96 + 293 = 7.24 × 2 = $14.48

[fol. 111] PLAINTIFFS' EXHIBIT 14

November 9, 1956.

Dr. Norman Vincent Peale
Marble Collegiate Church
Fifth Avenue at 29th Street, West
New York 1, New York

Dear Dr. Peale:

We are most pleased to hear from D.R. LeSourd that you will be able to speak to the luncheon meeting of our Company at the Waldorf-Astoria on December 14th. Dr. LeSourd felt you would be interested in a little further information concerning our group of people that will be in attendance.

This group will number approximately 350 people, composed principally of agents and wives. Also present will be our Agency Managers, Home Office officials and their wives. Most of the people will be from the Southwestern states of Texas, Oklahoma, Arkansas and New Mexico; and a small group will be from the states of Washington and Oregon.

Immediately prior to the luncheon we will have attended our business session, at which there will have been speeches by a few Home Office officials and a few of our leading agents. These speeches will have dealt with the agent's job of selling and servicing insurance, and the progress of our Company.

We would appreciate your talk being of an inspirational nature, along the lines of achievement, success and happiness that can be attained through proper attitudes of faith and practices of the well-ordered personal life.

[fol. 112] The nature of the life insurance agent's work is such that he practically entirely controls his own methods of operation and amount of effort applied to his work. He does not receive the close day by day, nor hour by hour

supervision as is present in many other lines of work. His relationship with his clients is a very personal one, and he is most often motivated, to a large degree, by the service he performs for his clients, in addition to the financial compensation received for the service. Therefore, the degree of success and satisfaction attained from his work depends not just entirely upon his knowledge of life insurance, but to a very large degree depends upon his attitudes toward his opportunities and his zeal to excel.

We hope to print our official program within the next few days and, therefore, would appreciate your advising us as soon as possible the title to be used for your address. We would also appreciate your letting us have a biographical sketch and a picture to be used in our printed program.

As soon as our final time schedule is set, we will advise you the exact time and place for the luncheon.

Sincerely yours,

.....,
Vice President,
Agency Director.

KBS:arp
cc—Dr. LeSourd
cc—Dan C. Williams
cc—John L. Briggs

[fol. 113] December 10, 1956

Dr. Norman Vincent Peale
Marble Collegiate Church
Fifth Avenue at 29th Street, West
New York 1, New York

Dear Mr. Peale:

We now have our time schedule for our Group Luncheon, and it will be in the Sert Room at 12:30, Friday, December 14th.

Looking forward with a great deal of pleasure to meeting you, I am

Sincerely yours,

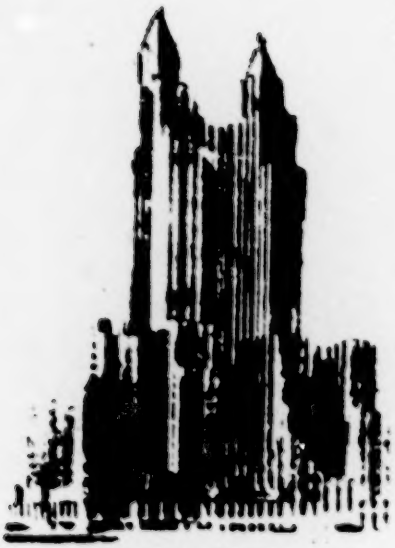
.....,
Vice President,
Agency Director.

KBS:arp

[fol. 114]

GOVERNMENT'S EXHIBIT 1

Your *1956* Convention QUALIFICATION RULES



WALDORF-ASTORIA HOTEL

New York City

Southland Life Insurance Company

[fol. 114]

GOVERNMENT'S EXHIBIT 1

[fol. 115] New York Agency Convention.

December 13-16, 1956.

An agent may qualify for himself and wife to attend the 1956 Convention at the Waldorf-Astoria Hotel, based upon his Paid-for production between May 1, 1955 and October 31, 1956 multiplied by his average persistency rate for that period. No provision has been made for an agent to qualify for himself alone. By meeting the requirements set out below, he qualifies for both himself and wife. Qualifications may be on Volume or Premiums as described below.

Volume Qualification:

1. If Contract is dated prior to May 1, 1955 and a Full-time Life Underwriter, the required Volume, after multiplying the Paid Convention Volume by the persistency average for the qualifying period, will be $100,000.00 of business paid for between May 1, 1955 and October 31, 1956 on at least thirty (30) lives.

2. If Contract is dated after May 1, 1955 and a Full-time Life Underwriter, making satisfactory progress, the Agent and his wife may be invited by the Company, if his paid Convention Volume, multiplied by his average persistency ratio, averages $22,223.00 per month from date of Contract through October 31, 1956, and provided further, however, that there be a minimum of at least $100,000.00 Paid business after applying the persistency factor.

3. The following volume credit will be given to various classes of business listed:

[fol. 116] (a) Full Volume credit will be given to all Ordinary permanent plans, Life Expectancy and Term to 65. Juvenile Estate Builder will count for initial face amount only.

(b) All forms of ordinary term (including Family Income and 20 Year Riders, Income Security, 5, 10, and 15 Year Term) will count for one-half (1/2) of initial face amount.

(c) Group Life (annual Renewable Term and Wholesale) will count one-fifth (1/5) of initial commuted face amount. Group Casualty lines (Accident and Sickness, Hospital Expense, Surgical Expense, Medical Expense, Accidental Death and Dismemberment) will be given Volume credit equal to twenty times the initial annualized premium. No credit will be allowed for additions or increases to existing groups. The maximum Group credit allowed for this Convention will be $100,000.00 before applying persistency factor.

(d) Volume credit of $1,000.00 will be given for each $30.00 (annual basis) of new personal Accident and Health or Hospitalization Premiums Paid. Renewal of Accident and Health or Hospitalization policies will not be considered new business.

(e) Conversion from Term to permanent plans, of insurance shall count full volume, in accordance with Agent's contract.

(f) No credit will be given for any form of Annuities.

[fol. 117] Alternate Premium Qualifications.

1. If Contract is dated prior to May 1, 1955 and a Full-time Life Underwriter, the required annualized Paid Premiums after multiplying the Paid Convention premiums by the persistency average for the qualifying period will be $12,000.00 paid for between May 1, 1955 and October 31, 1956 on at least thirty (30) lives.

2. If Contract is dated after May 1, 1955 and a Full-time Life Underwriter, making satisfactory progress, the Agent and his wife may be invited by the Company, if his Paid annualized Premiums after multiplying the Paid Convention Premiums by the persistency average for the qualifying period average $666.67 per month from date of Contract through October 31, 1956, and provided further that there be a minimum of at least $3,000.00 Paid Premiums after applying persistency factor.

3. The following Paid Premium credits will be allowed to various classes of business listed: (a) Full Premium

credit will be allowed for the annualized premium for all ordinary type plans of permanent and Term life insurance.

(b) Full Premium credit will be allowed for the annualized premium of Accident and Health premiums paid. (Renewal of Accident and Health policies will not be considered new business.)

(c) No Premium credit will be given for any form of Group insurance.

(d) No credit will be given for any form of Annuities.

[fol. 118] (e) Single Premium Life insurance will be given Premium credit equivalent to One Annual Premium for same Plan of insurance.

General Rules:

1. To qualify for Convention credit, business must be received in the Home Office not later than October 22, 1956 and paid for between May 1, 1955 and October 31, 1956. Business will be counted as Paid for when Policies have been issued and settlement for first premium has been received in Home Office.

2. Agents Contract must be in force on date Convention begins.

3. No award of any kind can be made in lieu of Convention trip.

4. We are sorry but it is impossible to make satisfactory arrangements for children to attend the Convention.

5. Business on the life of an Agent or immediate family will count, subject to other rules, if paid for during first twelve months of qualification period. Such business will be excluded if paid for during last six months of qualification period.

6. Qualification must be on Volume alone, or Premiums alone. No combination of the two can be considered.

7. The average persistency rate is calculated by adding the volume persistency rates for all months in the quali-

[fol. 119] fying period and divided the total by the number of months involved.

8. The persistency rate to be used is the persistency rate on Life volume only as shown on Company's regular monthly persistency reports.

9. The total accumulated Life, Accident and Health, and Group Convention business (both volume and premium credits) will be multiplied by the average persistency rate explained above to determine the agent's final Convention credits.

[fol. 120]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18788

C. J. D. RUDOLPH and IRMA M. RUDOLPH,

versus

UNITED STATES OF AMERICA.

ARGUMENT AND SUBMISSION—May 22, 1961

On this day this cause was called and, after argument by Richard A. Freling, Esq., for Appellants, and Meyer Rothwacks, Esq., Attorney, United States Department of Justice, for Appellee, was submitted to the Court.

[fol. 121]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18788

C. J. D. RUDOLPH and IRMA M. RUDOLPH, Appellants,

versus

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

OPINION—June 27, 1961

Before: JONES and BROWN, Circuit Judges, and DEVANE, District Judge.

PER CURIAM:

The facts are set forth in the opinion of the district court. *Rudolph* v. *United States*, 189 F. Supp. 2. The applicable law is to be found in *Patterson* v. *Thomas*, — F. 2d —, decided by this Court on March 16, 1961. No factual differences call for the application of a different [fol. 122] rule or the reaching of a different result than in *Patterson* v. *Thomas*. The judgment of the district court is

Affirmed.

BROWN, Circuit Judge, Dissenting:

To what was urged by my dissent in *Patterson* v. *Thomas*, 5 Cir., 1961, — F. 2d — at — [No. 18263, March 16, 1961]. I would add brief comments on a few matters bearing emphasis in this record.

The notion that this was one big happy company-paid-for-holiday in New York City where a formal session for the first half day was a mere tip-of-the-hat to give appear-

ances of a working trip is simply unfounded. Mr. Rudolph, the Taxpayer, and his wife—a companion, co-worker, partner-in-fact in the business of life insurance business as well as fellow Taxpayer—had nothing to do with selecting the time, the place, or the program. All was planned, precisely as to moment, locality, event and eligible participants. Moreover, it was not, as the Government seeks to make it appear, a long trek for a half of a day's formal business activity. Those selected by Southland Life Insurance Company were required to travel together. This group of 293[1] made up of 151 men and 142 wives drawn from the South and Southwest were compelled to come to Dallas where they became passengers on "two convention [fol. 123] special trains." The trains departed on Tuesday, December 11. Nearly 48 hours later and about 3:00 p.m. Thursday, December 13, the trains were to arrive at Jersey City, New Jersey, where special chartered buses took the travelers to the Waldorf-Astoria. On Sunday morning similar buses took all from the hotel to the trains for the return trip by the convention special trains arriving back in Dallas some time on Tuesday, December 18.

It is not, therefore, a case of employees getting together for the half-day's session on Friday, December 14, with all remaining time free. Out of the approximately 149 hours from Tuesday, December 11, to Tuesday, December 18, in the neighborhood of 96½ of them were spent in enforced togetherness. It is neither an exaggeration nor does it require more than an amateur license as a lyrist to contemplate that with the rhythmic clickety-clack of the wheels as this train made its way to and from New York City and Dallas, each recipient was reminded of the company message in a syncopated way. And a part of that message was that the company intended that all who were asked to attend would do so. Of course in the psychological complex of a sales business this point was not made crudely. Where in *Thomas* management phrased it as "frowning" on any who declined the trip, Southland has

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[1] The breakdown was as follows: agents 102, wives 97; salaried field assistants 3, wives 3; assistant managers 2, wives 2; managers 17, wives 17; officers 27, wives 23.

euphemisms of equal portent. Its agency vice president, after stating that an agent indicating he would not attend was required to give an explanation, testified that "if he [the agent] doesn't have a proper reason it would be looked upon with serious displeasure."
[fol. 124] This convention trip was meant for the agent's own good. Of course that was equated with the company's good for it was wise psychologically and ethically legitimate to conclude that what was good for the agents was good for Southland. The emphasis was not really the pointed one of increasing sales. That, and the company's benefit, was to come primarily from reassuring the agents that things were not really as bad as they seemed. High officials testified without contradiction that in the life insurance sales business where there are so many "turndowns" by prospects, it is essential to buoy up the spirits of these solicitors. This, experience proves, is best accomplished through the constant, close association on an informal semi-social basis of many successful salesmen who have weathered and overcome similar discouragements.

The insidious purpose—here used with no moral overtones of disparagement—of the company's theme on the minds and wills of its captive audience, was exemplified in the most intense fashion by the Friday luncheon at the Hotel Waldorf-Astoria which ostensibly had no specific relation to selling life insurance. One of the nation's outstanding ministers and public speakers, renowned for his syndicated writings, television and radio appearances, was the luncheon speaker. But even this was not left to chance. The company, by letter, outlined to him the nature of the meeting and suggested that the talk be "of an inspirational nature, along the lines of achievement, success and happiness that can be obtained through proper attitudes of faith and practices of the well-ordered personal [fol. 125] life." After discussing the nature of a life insurance agent's work and the essential motivation of genuine service to his clients, management's estimate of the importance of these things was stamped by this conclusion in the letter. "Therefore, the degree of success and satisfaction obtained from his work depends not just entirely

upon his knowledge of life insurance, but to a very large degree depends upon his attitudes toward his opportunities and his zeal to excel." It is not surprising that the agency vice president testified of this speech that this speaker "did a better job than I had hoped he would" and that the speaker "did mention something specifically about the work of an insurance man * * * " and "he knew more about it than I did."

Unlike *Thomas* which concentrated on the practice followed by that particular life insurance company, this record contains the uncontradicted testimony of the Managing Director of the Life Insurance Agency Management Association. This is an industry-supported organization interested in research, management consultation, education and training, and publications in the life insurance business. From his 30-years' experience in life insurance from the management point of view, this witness outlined why management would consider it good business to spend $84,000, as was done here, on such a convention for its leading agents. He emphasized the importance of personal contact in an informal setting among those who either were top flight producers or had shown promise. This included the opportunities for intimate associations with high level executives under circumstances which afforded ample [fol. 126] time free from the diversion of workaday problems were such meetings undertaken in home office surroundings during working hours.

Indeed, as in *Thomas*, the Government does not question this. It acknowledges, as it must, that this is a legitimate expenditure by the employing life insurance company. But it is precisely at this point that the whole matter reaches its climax: if an event is of such importance in management's eyes, it is certainly got something which the company considers the agent may accept or decline on a take-it-or-leave-it basis. In other words, what the company does for the agents' (and its) good is known by both to be important and expensive. What is tendered must be accepted unless there is a real good excuse. This record, therefore, reiterates with emphasis the actual, psychological, economic pressure of compulsion under which the agent (and his wife) are coerced into taking what is offered.

The future economic livelihood of an agent under a contract granting the employer the right of termination at will is the thing at stake. To take a trip to preserve that security is something not done primarily for personal enjoyment. Conceding that the $560 cost must be attributed to Taxpayer as income, it rejects this record to conclude that it is a matter of voluntary personal enjoyment when the employee *must* take the income, *pay* tax on it, *spend* it precisely as *directed* by the *donor* and then treat it as though this were an ordinary personal junket of a family on a holiday. In a real and vital sense the money is spent [fol. 127] for business and business reasons only. It is indispensable. What is indispensable is certainly ordinary and necessary.[1]

In the realistic formula of "ordinary and necessary," life insurance agents under such compulsion should have like treatment accorded to others. Deductions have been allowed as "ordinary and necessary" to clergymen attending a church convention; to expenses of an employee at-

[1] Both on this underlying issue and the subsidiary one of allocation and apportionment the relative cost to be able to attend the formal business sessions in relation to the total $560 attributed income, is substantial either on the basis of the husband alone or husband and wife together. In other words it cost Taxpayer alone a minimum of $215.41 to be able to attend the half-day sessions in New York. These facts are not disputed:

Expense	Cost per person	Cost per couple
Meals in New York		
1 breakfast	$ 2.00	$ 4.00
1 luncheon at Waldorf	6.00	12.00
Round trip train fare	119.40	238.80
Pullman cost	37.13	74.26
Rail meals	30.54	61.08
Baggage, porter & dining car tips	8.23	16.46
Hotel New York (4 days) approximately 1/3 on basis 3 days actual cost	12.11	24.22
	$215.41	$430.82

Marion D. Shutter, 2 B.T.A. 23

tending conventions of a related business group;[4] to a lawyer attending a meeting of the American Bar Association;[5] to a legal secretary attending the national convention of the National Association;[6] to physicians attending medical conventions;[7] to certified public accountants attending con- [fol. 128] ventions;[8] to university teachers in attending conventions or scientific meetings;[9] to professional cartoonists attending political conventions;[10] to persons attending the Red Cross Convention;[11] to school teachers attending summer school;[12] to attorneys attending an institute on Federal taxation;[13] to employees sent to refresher courses to become more acquainted with new processes in the industry;[14] to a furniture store sending its buyers to the annual furniture mart;[15] to representatives to annual conventions of trade associations;[16] and to an insurance agent away from home on business.[17]

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[4] Ratterman et al., 7 T.C.M. 476, affirmed without opinion, 6 Cir., 1949, 177 F.2d 204.

[5] Ellis v. Burnet, D.C.Cir., 1931, 50 F.2d 343.

[6] Rita M. Callinan, 12 T.C.M. 170.

[7] Robert C. Coffey, 1931, 21 B.T.A. 1242; Wolfe v. McCaughn, E.D.Pa., 1933, 17 AFTR 1007; Ray Upham, 1929, 16 B.T.A. 950; J. Bentley Squier, 1928, 13 B.T.A. 1223; Cecil M. Jack, 1928, 13 B.T.A. 726.

[8] Charles O. Gunther, Jr., 54,287 P-H Memo T.C.

[9] Alexander Silverman, 6 B.T.A. 1328.

[10] Jan N. Darling, 4 B.T.A. 499.

[11] Henry Cartan, 30 T.C. 308.

[12] Hill v. Commissioner, 4 Cir., 1950, 181 F.2d 906.

[13] Coughlin v. Commissioner, 2 Cir., 1953, 203 F.2d 307.

[14] Pacific Grape Products Co. v. Commissioner, 17 T.C. 1097 (reversed on other points, 9 Cir., 1955, 219 F.2d 862).

[15] Finkenburg's Sons, Inc., 1952, 17 T.C. 973.

[16] I.T. 2602, 1931 Cum. Bull. 130.

[17] Summerour v. Allen, M.D.Ga., 1951, 99 F.Supp. 318.

This Court recently held in *Williams* v. *Patterson*, 5 Cir., 1961, 286 F.2d 333, that expenditures made by a railroad conductor on his layover period of six hours were deductible even though all of the activities could narrowly be classified as "personal activities." In doing so we said: "although most of these factors in a narrow sense affect the personal convenience of the traveler, the motivation for sleep and rest arises from the exigencies of the employment, the business demands of the employer, the relation of the employee to his employer. * * * " Then we concluded the correct rule to be that expenditures made "in order to meet the exigencies of his employment or the busi-[fol.129] ness demands of his employment" are properly deductible. 286 F.2d 333 at 339-40.

The contemporary interest in possible legislative changes suggests that perhaps the understandable, realistic "ordinary and necessary" formula produces results unsatisfactory to the revenue, undesirable from a socio-economic point of view or impossible of orderly administration. That may be so but the remedy is for Congress. Until then we have to view the formula in the light of the facts. Here, in my judgment, these facts show an honest, legitimate, ethical expense. More than that these facts compel a finding of absolute business compulsion when viewed from the standpoint of the agent's economic security.

I therefore dissent.

[fol. 130]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 18788

C. J. D. RUDOLPH and IRMA M. RUDOLPH,

versus

UNITED STATES OF AMERICA.

JUDGMENT—June 27, 1961

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

"Brown, Circuit Judge, Dissenting."

[fol. 131]

IN UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 18,788

C. J. D. RUDOLPH and IRMA M. RUDOLPH, Appellants,

versus

UNITED STATES OF AMERICA, Appellee.

APPELLANTS' MOTION FOR REHEARING—Filed July 18, 1961

Now comes C. J. D. Rudolph and Irma M. Rudolph, Appellants, and move this Honorable Court to grant to them a rehearing in the above-styled cause, and as grounds for

said motion set down and assign the following, separately and severally:

I.

This Court erred in holding that the payment by the Company of the expenses attributable to Appellants' travel to and attendance at a business convention sponsored by the company constituted taxable income to the Appellants for Federal Income Tax purposes.

[fol. 132]

II.

This Court erred in holding that no part of the expenses paid by the Company which were attributable to Appellants' travel to and attendance at the Company's convention were deductible by Appellants as ordinary and necessary business expenses, in the event that the payment of such expenses for Appellants constituted taxable income to them for Federal Income Tax purposes.

III.

This Court erred in failing to hold that the findings of the Trial Court were mistaken conclusions and, therefore, clearly erroneous.

IV.

This Court erred in affirming the Judgment of the Trial Court.

Respectfully submitted,

Felix Atwood, B. Thomas McElroy, Richard A. Freling, 1900 Mercantile Dallas Building, Dallas 1, Texas, Attorneys for Appellants.

[fol. 133] Certificate of Service (omitted in printing).

Certificate of Counsel (omitted in printing).

[fol. 134] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

[Title omitted]

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

ORDER DENYING PETITION FOR REHEARING—July 28, 1961

Before: JONES and BROWN, Circuit Judges, and DEVANE, District Judge.

PER CURIAM:

It Is Ordered that the petition for rehearing in the above entitled and numbered cause be, and the same is, hereby Denied.

BROWN, Circuit Judge, Dissenting.

[fol. 135] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 136]

SUPREME COURT OF THE UNITED STATES

No. 396—October Term, 1961

C. J. D. RUDOLPH, et al., Petitioners,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—November 13, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.